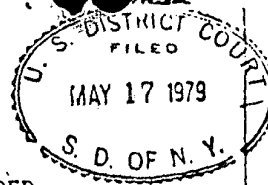


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UDITH CLARK, et al.,

Plaintiffs,

- against -

UNITED STATES OF AMERICA, et al.,

Defendants.

AMENDED
PROTECTIVE ORDER

78 Civ. 2244 (MEL)

Plaintiffs having moved this Court for an order to
protect the discovery process and to further the interests of
justice, and the Court having duly considered the matter, it
ORDERED that:

1. No document identifiable with any plaintiff in
the possession, custody or control of the individual defendants
or Government agency defendants shall be destroyed or obliterated
in any manner pending a final determination of this action,
including any appeals, or upon further order of this Court:

2(a). All documents referred to in, and protected
by this order shall be placed and maintained under supervisory
control of the Court in the physical custody of any person or
agency now in possession of such records who shall be responsible
for the physical integrity of the documents. Any defendant
which has in its possession any of the documents shall be bound
by its terms.

3(a). A copy of this order shall be circulated
to each field office and legal attaches of the Federal Bureau of
Investigation ("FBI") as well as any organizational unit within
the headquarters of the FBI. Additionally, copies of the order
will be circulated to appropriate officials of the Postal Service
and Department of Justice having custody of documents identifiable
to any plaintiff.

Do Not Remove
RETAIN AS TOP SERIAL
C

SEC. 5

62-118045

NOT RECORDED

JUN 11 1979

Greenberg/Gray-5953

(b). A copy of this order shall be placed in each volume or section of all FBI main files identifiable as relating to plaintiffs.

(c). The FBI shall prepare an index of all main files referred to in 3(b) above, specifying the serial numbers of documents contained in each file and the location of each file. A copy of the index shall be furnished to ^{for each party} plaintiffs' attorneys, and to the Court.

4. Documents protected by this order include (a) all records of any kind and description which have been garnered in connection with past and present investigations and may be garnered in connection with future investigations of any plaintiff, including but not limited to records which are identifiable to plaintiffs though contained in records pertaining to investigations of organizations or individuals with which any plaintiff may have had or may have affiliations, and (b) directives or guidelines governing the conduct of such investigations, including but not limited to the FBI Manual of Instructions and Attorney General Guidelines.

5. All documents compiled in the course of the prosecution or defense of United States v. Gray and United States v. Felt and Miller, 78-000179 (Bryant, C.J.), excluding attorneys' work products, shall be subject to the provisions of paragraphs 1 and 2 of this order. At the conclusion of the prosecutions, all documents covered by this order shall be maintained in the custody of attorneys, or their successors in control of such documents pending final determination of this action.

6. Nothing in this order shall preclude the handling, necessary marking of documents, or necessary alteration of copies of documents in the ordinary course of business or trial preparation by anyone in possession of the documents.


7. It is the intent of the Court that this order shall be broadly construed so as to prevent the destruction of any documents. In the event of any question by ^{any} defendant ^{MSX} concerning the scope and coverage of this order, or any question concerning whether any particular documents come within the designated scope and coverage of this order, the documents in question will not be destroyed or obliterated in whole or part, until either: (a) they are presented to ~~The attorneys for the other parties~~ ^{plaintiffs and plaintiffs' attorneys} for examination and ~~such parties,~~ ^{plaintiffs,} by their attorneys, stipulate in writing that the documents may be destroyed or obliterated in whole or part; or (b) the Court, after a hearing duly noticed, exempts the specified documents in question from its order.

8. In addition to specific instructions concerning communication of the contents of this order contained herein, defendants and their attorneys shall communicate the contents of this order forthwith to all appropriate individuals so as to assure the effectuation and compliance with the order by all persons.

9. Within 30 days, defendants shall report to the Court all steps taken so as to assure the effectuation and compliance with this order by all persons.

Dated: New York, New York

~~APR 12 1979~~
May 16, 1979


United States District Judge

~~CONFIDENTIAL~~

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

51
~~2~~
Memorandum

TO : Mr. Bassett *WMB*

Daly
DATE: 1/30/79

FROM : P. V. Daly *PV*

SUBJECT: U. S. vs GRAY ET AL
L Patrick

6076 ZLH/KLB
1/30/79
CLASS. & EXT BY
REASON-FCIM II, 1-2.4.2
DATE OF REVIEW *1/30/99*

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. *WMB*
Rec. Mgnt. *WMB*
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

PURPOSE:

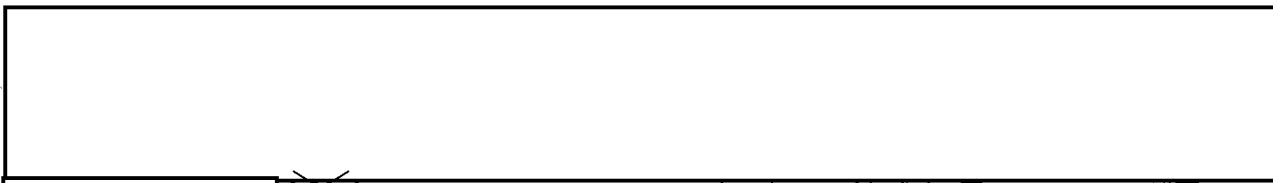
To advise that Government has submitted motions
in limine. *(ZL)*

DETAILS:

(C)
As you are aware, the Government, in the prosecution
of this matter, is faced with a substantial risk of disclosing
sensitive material in the course of the trial. This is
occasioned by the nature of the charges and the knowledge of
the defendants and potential witnesses of highly sensitive
information. In order to prevent the unnecessary disclosure
of sensitive information, the Government has submitted to the
court motions in limine (copies attached). The motions admit
that certain sensitive information is relevant evidence to
defenses of the defendants. *(ZL)*



b1




b1

Enclosures

- 7-ENCLOSURE*
ENCL BEHIND FILE
1 - Mr. Adams
1 - Mr. McDermott
1 - Mr. Cregar
1 - Mr. Mintz

EXEMPTED FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(1)
DATE 02-27-2009

- 62-118095-748*
5 FEB 12 1979
1 - Mr. Moore
1 - 
1 - Mr. Bassett
1 - Mr. Daly

b6
b7C

PVD:jam *jam* (9)

(CONTINUED-OVER)

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

P. V. Daly to Mr. Bassett Memorandum
Re: U. S. vs Gray Et Al

Should this stipulation not be acceptable to the court, the Department intends to seek the approval of the State Department and Department of Defense to make greater public disclosure of the Program. (ZL)

(C) [redacted]
[redacted]
[redacted] While this is not the intention of the Department, it becomes likely because of material furnished to the defense in connection with Discovery in this matter. (C)

For example, Edward S. Miller, one of the defendants in this case, [redacted]

(C) [redacted] His personnel file, which is being furnished in connection with the Discovery, has very detailed communications in it describing [redacted] as well as rewarding him for same. George W. Calhoun, the Assistant Section Chief in the Criminal Division, as well as Robert Keuch, Deputy Assistant Attorney General of that Division, have been apprised of this particular problem since they are the Departmental representatives who will seek the approval of State and Defense if necessary for greater disclosure. [redacted]

(C) [redacted]
[redacted] (C)

The motions also are directed toward preventing the defense from introducing evidence of foreign involvement. The court ordered the production of material furnished to the FBI by cooperative foreign intelligence services. In these motions the Government is arguing it is irrelevant and seeks the court's concurrence in denying the defense the documents as well as eliminating any testimony in that area. The Department petitions the court to instruct there be no disclosure of classified material in the absence of court permission which is to be granted in camera. (ZL)

RECOMMENDATION:

For information. (ZL)

APPROVED: [signature]

Director

Assoc. Dir.

Dep. AD

Dep. AD

Adm. Serv. _____

Crim. Inv. _____

Ident. _____

Intell. _____

Laboratory _____

Legal Coun. _____

Plan. & Insp. _____

Rec. Mgnt. HIS

Tech. Servs. _____

Training _____

Public Affs. Off. _____

- 2 -

~~CONFIDENTIAL~~

Greenberg/Gray-5957

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 12-11-09 BY 60322 BJS/BJS



62-118045-

ENCLOSURE

1 Q Why?

2 A You will have to ask Mr. Miller that.

3 Q When Mr. Hoover was there, you would not have
4 approved a matter of this kind without checking with Mr.
5 Hoover --

6 A You're trying to tell me that I approved one in
7 1968 --

8 Q Let me finish.

9 A All right.

10 Q You would not have approved a matter of this kind
11 without checking with Mr. Hoover, isn't that correct

12 A Right.

13 Q Why did you change your style of operating when
14 Mr. Gray came in?

15 A Because Gray specifically told me that he wanted
16 me to run the Bureau.

17 Q Go ahead and explain that to me further. What
18 did he say about your running the Bureau?

19 A He told me that I was his chief of staff and he
20 wanted me to run all the day-to-day operations and this
21 made sense, because he visited every field office but one.
22 He made numerous speeches, as you know and he was away almost
23 all the time.

24 Q Did you make operational decisions of a magnitude
25 similar to this one, without consulting Mr. Gray in other

Exhibit "A"

1 fields?

2 A I don't have any specific recollection, but I'm
3 sure that I did.

4 Q You're sure that you did?

5 A Yes.

6 Q And then you advised him of your actions later
7 in some fashion?

8 A Sometimes, but not always. Mr. Gray complained
9 very bitterly about the volume of material that I was
10 forwarding to him. It would depend a little bit upon what
11 it was. On the Weathermen, I didn't see any reason to tell
12 him about that.

13 Q When did Mr. Gray tell you that he expected you
14 to run the Bureau in an operational sense, to have the
15 latitude that you are now talking about?

16 A I can't specifically say when. We had a number
17 of very hasty conversations during those first few days
18 that he was director.

19 Q Would it have occurred during that period?

20 A Yes.

21 Q In any event, it's clear in your mind that there
22 was a distinctive change of style in that regards?

23 A Oh, very definitely.

24 Q Between Mr. Hoover and Mr. Gray?

25 A Very definitely.

1 Q You did have a great deal of latitude, including
2 the latitude in your mind, to approve the surreptitious
3 entry?

4 A Yes.

5 Q Did you say you told Mr. Gray after the Weather
6 Underground entry in New York that you had approved it?

7 A No, I didn't say that.

8 Q Did you in fact, tell him after you had approved
9 it?

10 A No, I don't think so.

11 Q Do you know whether he ever found out that you had
12 approved it?

13 A I don't know.

14 Q Do you know whether he ever got a report about
15 the results?

16 A I don't know that for sure, either.

17 Q Do you know whether Mr. Miller had ever talked
18 to him about it?

19 A I don't know.

20 Q Did Mr. Gray ever ask you about it?

21 A No.

22 Q As far as you know, Mr. Gray, to this day, does
23 not know about your approval?

24 A I think when Mr. Gray says that he didn't know
25 anything about the Weathermen Underground, he is telling the

1 truth.

2 Q Did you ever have contact with the Attorney
3 General of the United States while you were at the FBI?

4 A Yes.

5 Q In what respect?

6 A I don't specifically recall now, but when Gray
7 was out of town and matters arose, I might have occasionally
8 called him, but not very often. Sometimes he might have
9 had occasion to call me.

10 Q Did you ever advise the Attorney General of any
11 break-in?

12 A No.

13 Q Did you ever advise him of a wire tap?

14 A Did I ever advise him of a wire tap?

15 Q Right.

16 A The Attorney General was advised of every wire
17 tap. His approval was obtained in advance.

18 Q Did you ever advise him of a wire tap on which
19 the Attorney General had not given prior authorization?

20 A No.

21 Q Did you ever advise the Attorney General that
22 surreptitious entries, wire taps, microphones or other means
23 of surveillance for which the authorization of the Attorney
24 General was not sought, were in fact being employed by the
25 FBI?

1 A No.

2 Q Do you know whether the Attorney General ever had
3 knowledge that such was the same, such was in existence?

4 A I don't have any personal knowledge that he did.

5 Q Do you have any hearsay knowledge?

6 A The only knowledge I have is sheer speculation.

7 Q Would you speculate, please?

8 A I don't know whether I want to get pinned down
9 on thoughts that are floating around in my mind, but
10 not facts. But, there is a whole scenario here of a man
11 by the name of Sullivan, trying to take over the directorship
12 and I see him in this picture very frequently. I can't
13 document any of it. I'm gradually beginning to get it
14 together. I'm going to have a chapter in my book about it,
15 as a matter of fact.

16 Q What specifically do you suspect happened in
17 that regard, with regard to relationships between Sullivan
18 and the Attorney General?

19 A What I think is that Sullivan probably told the
20 Attorney General what was going on and that the Attorney
21 General told Gray and that Gray told the SAC's that they better
22 damn well be sure if they did any surreptitious entries or
23 black bag jobs, that they get prior approval, first.

24 Q I understand what you're saying and --

25 A This is just speculation.

1 Q I understand that it's speculation, in your
2 view, it's speculation. I understand you said that, but I
3 want to explore it for a moment, anyway.

4 When do you speculate that that conversation or
5 set of conversations took place; that is, when the
6 Attorney General was advised that this was possible and the
7 Attorney General in turn advised Gray to be careful and to
8 have approvals?

9 A I think that's what happened, yes, but I'm not
10 sure.

11 Q When do you believe that happened?

12 A I have no idea. It just happened before the
13 SAC conference.

14 Q Shortly before?

15 A I have no way of knowing.

16 Q A year before?

17 A It couldn't have been a year before, because
18 Gray was not there a year. This conference we're talking
19 about took place in either August of September of 1972 and
20 Gray just came in in May of '72.

21 Q Would you speculate as to how you believe the
22 Attorney General was advised of this opinion by Mr. Sullivan?

23 A I have no way of knowing.

24 Q What makes you think that this happened?

25 A My good judgement tells me this is what happened,

PART II

8. T 18, USC, § 2236, makes it a violation to search without a warrant either a private dwelling or to maliciously and without reasonable cause search any other building or property. This section does not apply to a person making a lawful arrest or conducting a consent search.

D. Methods of conducting lawful searches and seizures
1. Search by search warrant (See rule 41, Federal Rules of Criminal Procedure and T 18, USC, § 3103a.)

In making a lawful search under a search warrant, the officer may also seize the known instrumentalities, fruits, contraband, or other evidence of any other crime which he incidentally discovers while making the search for which the search warrant was issued. (See Bureau monographs on this subject which have been sent to all offices.)

[However, mere private possession of obscene matter cannot constitutionally be made a crime. Stanley v. Georgia, 394 U.S. 557 (1969). Therefore, material observed in plain view while an Agent is lawfully on the premises, as during the lawful execution of a search warrant, should never be seized merely because it appears obscene, no matter how offensive the material appears to be. Multiple copies of obscene items indicate commercial rather than private use. Where multiple copies are observed, immediately contact United States Attorney and consider advisability of obtaining search warrant.]

2. Search incident to a lawful arrest

At the time a lawful arrest is made, either with or without a warrant, Agents are authorized to search the subject's person and only that area within his reach for weapons and evidence (includes fruits and instrumentalities) of the offense. Contraband and evidence of other crimes may also be seized. Chimel v. California, 395 U.S. 752 (1969).

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DATE 02-27-2009 BY 65179 dmh/baw/sbs

Exhibit "B"

14d
8-16-71

PART II

3. Search by consent

- a. The person of whom consent is asked must first be clearly informed of his constitutional right to refuse a search without a search warrant and he must waive that right. The Government must be able to show convincing evidence that consent was given freely and voluntarily. Mere submission to the desires of the officer is not consent. Fraud, subterfuge, misrepresentation, or duress, whether express or implied, voids the consent.
- b. Consent is preferably obtained in writing, using form FD-26. When the person gives consent but refuses to sign the form, it should be completed except for his signature. [Endorse on its face the fact that he read the form or that it was read to him, whichever was the case. Further, record on the form the exact language used to express consent.] If the required warning is given and oral consent is obtained without reference to the form or other writing, the fact of such warning

PART II

[and consent should be clearly reported.
[Where the person giving consent limits it
[in any manner, such as restricting the
[search to specific objects or to only a part
[of the premises, FD-26 should be amended
[by hand to show any such limitations.]
[[c.] Valid consent can be given only by one
having the right to possess the premises
at the moment. The right of possession
to rented premises is in the tenant or
hotel guest, not the owner. If the one
entitled to possession has left the prem-
ises in care of a superintendent, plant
manager, or other general agent, the latter
may give a consent valid against the posses-
sor. An employee without managerial or
agency powers cannot give a consent valid
against his employer. In corporate or
business situations, consent should be
obtained from the highest ranking official
on the premises to be searched. For a
search of company records, consent of the
office manager, under whose control and
supervision those records are kept, is
sufficient. An employer's consent to
search of the business premises is valid
against an employee, except as to that
part of the employee's desk, locker, etc.,
reserved exclusively for keeping the
employee's personal possessions. In
marital situations, either spouse may give
a consent valid against the other to a
search of their common dwelling, except
for a suitcase, desk, or other thing or
place therein exclusively owned or
controlled by the other spouse. Validity
of the consent is also doubtful where the
spouse against whom the search is directed
has previously refused consent to search.
One spouse cannot give consent valid
against the other to search of business
premises under the control of the other,
even though located under the same roof
with the dwelling, unless the consenting
spouse has been given agency authority by
the controlling spouse. Such agency
cannot be implied from the marital
relationship alone. A partner in a
business enterprise may give a consent
valid against the other partners,
probably subject to the same exceptions
shown for a spouse. A householder may
give a consent valid against a temporary,
nonpaying guest residing in the dwelling
at the moment. In the absence of authority
to the contrary, such as an opinion of
the USA, it should be assumed that a
minor child (or other dependent) has no

PART II

possessory right in the premises other than that derived from the parents and cannot give consent to search valid against the parents.

- 4. [Deleted]
- 5. [Search of motor vehicles]
 - a. Agents may search a mobile vehicle, without a warrant, when there is probable cause to believe that the vehicle contains evidence of a Federal violation. *Brinegar v. U. S.*, 338 U. S. 160 (1949); *Carroll v. U. S.*, 267 U. S. 132 (1925).]
 - b. A legal search may be made of an automobile or other vehicle and evidence therein contained seized by search warrant, as incidental to lawful arrest (must be contemporaneous - *Preston v. U. S.*, 376 U. S. 364 (1964)), or by consent.
- 6. Immunity of representatives of foreign governments and their property from arrest, search, and seizure
 - a. Diplomatic representatives of foreign governments in the U. S. are exempt from arrest by all officers, Federal and state.
 - b. Federal or state officers may not enter the office or dwelling of these diplomatic representatives for the purpose of making an arrest, search, or seizure.
- 7. Inventory and receipt for property obtained through search and seizure
 - a. During the course of a search incident to a lawful arrest, or by consent with a waiver, if money, property, documents, or anything of value is seized from the person or premises, an itemized list in duplicate (triplicate if by search warrant) of the property seized shall be made. The description of the property must be adequate and accurate.

The following certification must be set out at the end of the itemized list and

PART II

shall be witnessed by two Agents or one Agent and another person. If the person from whom the property was seized refuses to sign this certification, a notation should be made indicating the reason for refusal.

This is to certify that on _____ at _____, Special Agents of the Federal Bureau of Investigation, U. S. Department of Justice, at the time of conducting a search of my person and/or the premises at _____ obtained the above-listed items. I further certify that the above represents all that was obtained by Special Agents of the Federal Bureau of Investigation, U. S. Department of Justice.

(SIGNED) _____

Witnessed:

Special Agent
Federal Bureau of Investigation
U. S. Department of Justice

Special Agent
Federal Bureau of Investigation
U. S. Department of Justice

One copy of the itemized list is to be furnished the subject or person from whose premises the property was obtained as a receipt. The original shall be maintained in the exhibit envelope of the proper case file.

- [b. Where a search[of premises] is conducted under a search warrant, the itemized list and certificate shall be prepared in triplicate[since the law requires that the original thereof shall be returned to the Federal magistrate]issuing the search warrant. One copy of this itemized list [as an inventory, together with a copy of the search warrant, shall be turned over to]the subject as provided for in Rule 41 of the Federal Rules of Criminal Procedure.
- c. Whenever a search is conducted in any manner, no property or anything of value is seized, the following certificate shall be obtained:

14h

3-19-73

PART II

This is to certify that on _____ at _____
Special Agents of the Federal Bureau of
Investigation, U. S. Department of Justice,
conducted a search of the premises at _____
occupied by me. I certify that nothing
was removed from my custody by Special
Agents of the Federal Bureau of Investiga-
tion, U. S. Department of Justice.

(SIGNED) _____

Witnessed:

Special Agent
Federal Bureau of Investigation
U. S. Department of Justice

Special Agent
Federal Bureau of Investigation
U. S. Department of Justice

8. Counting recovered money
Whenever money or other property consisting
of numerous items requiring counting is
obtained in connection with Bureau investiga-
tions, the money or property should be inde-
pendently counted by two Agents and their
results compared for the purpose of verifying
the accuracy of the count and detecting any
errors.

E. Policy

1. Search warrants should be obtained in all
cases wherever possible. Efforts to have
search warrant issued, whether successful
or not, should be reported. A copy of
every affidavit filed by an Agent is to
be obtained and filed as a serial in the
case file.
2. USA's authority is necessary before applying
for a search warrant.
3. Deleted
4. Searches and seizures must be planned and
conducted in as short a period of time as
possible.
5. There must be no exploratory searches.

F. Searches and seizures by state, local, or
foreign officers

Relevant evidence seized independently by state,
local, or foreign officers must be called to

PART II

the attention of the USA promptly and described in the next investigative report so that attention will be directed early to the circumstances of its seizure. All evidence seized illegally by state or local law enforcement officers is inadmissible in court, regardless of the jurisdiction of the officer by whom it was seized or the court in which it is presented. *Mapp v. Ohio*, 367 U. S. 643 (1961). Legality is to be tested by the Federal standard, however, with the result that a Federal court may uphold a seizure previously held illegal by a state court. Relevant evidence seized by foreign law enforcement officers in their own country and acting on their own initiative may be admissible in a U. S. court even though the evidence was not obtained in conformance with fourth amendment standards. *Brulay v. U. S.*, 383 F. (2d) 345 (1967).

- G. Searches and seizures by U. S. Customs Service
The Bureau will not request or conduct an examination or search of baggage or other material under the control of diplomatic personnel or similar official personnel of foreign governments without first obtaining the permission of the State Department. When information is received that such a person is carrying material of importance to the national security, the permission of the State Department is requested to have the search effectuated. Requests should be made to the local office of the U. S. Customs Service to effect a search of material in the possession of individuals who do not have any official status when in the opinion of the field it is believed that something of value will be ascertained (see part I, sec. 25H, of this handbook replacing of stops with INS). Bureau Agents may be present at such an examination in the capacity of an observer only.

- [H. [Upon request of a defendant, the Government shall
[permit the defendant to inspect and copy or photograph:
[written or recorded statements made by the defendant,
[the substance of any oral statement which the Government
[intends to offer in evidence at the trial made by the defendant
[whether before or after arrest in response to interrogation by any person
[then known to the defendant to be a Government agent, results or reports
[of physical or mental examinations, scientific tests, or experiments.
[If the defendant demands disclosure, he must upon request by the Government
[permit the Government to inspect and copy similar items in his possession.
[Upon request of the defendant the Government shall furnish to him a copy of his prior criminal records if any.
[Upon a sufficient showing the court may order the discovery or inspection be denied, restricted, or deferred, or make such other order as appropriate.
[(Rule 16.)]

14j
3-16-76

UNITED STATES GOVERNMENT

ROUTE IN ENVELOPE

Memorandum

~~CONFIDENTIAL~~

Mr. C. D. DeLoach

DATE: July 19, 1966

H. C. Sullivan

DO NOT FILE

"BLACK BAG" JOBS

~~1 - Mr. DeLoach~~
~~1 - Mr. Sullivan~~

Tolson ☒
DeLoach ☒
Mohr ☒
Wick ☒
Casper ☒
Callahan ☒
Conrad ☒
Felt ☒
Gale ☒
Rosen ☒
Sullivan ☒
Tavel ☒
Trotter ☒
Tele. Room ☒
Holmes ☒
Gandy ☒

The following is set forth in regard to your request concerning what authority we have for "black bag" jobs and for the background of our policy and procedures in such matters.

We do not obtain authorization for "black bag" jobs from outside the Bureau. Such a technique involves trespass and is clearly illegal; therefore, it would be impossible to obtain any legal sanction for it. Despite this, "black bag" jobs have been used because they represent an invaluable technique in combating subversive activities of a clandestine nature aimed directly at undermining and destroying our nation.

The present procedure followed in the use of this technique calls for the Special Agent in Charge of a field office to make his request for the use of the technique to the appropriate Assistant Director. The Special Agent in Charge must completely justify the need for the use of the technique and at the same time assure that it can be safely used without any danger or embarrassment to the Bureau. The facts are incorporated in a memorandum which, in accordance with the Director's instructions, is sent to Mr. Tolson or to the Director for approval. Subsequently this memorandum is filed in the Assistant Director's office under a "Do Not File" procedure.

In the field the Special Agent in Charge prepares an informal memorandum showing that he obtained Bureau authority and this memorandum is filed in his safe until the next inspection by Bureau Inspectors, at which time it is destroyed.

Our most comprehensive use of this technique and a measure of the outstanding success we have achieved with it involves its use in the [redacted] Program. This involves our efforts to [redacted]

EJS/pca

(3)

Exhibit "C"

CONTINUED

Greenberg/Gray-5972

~~CONFIDENTIAL~~

Memorandum to Mr. C. D. DeLoach
Re: "BLACK BAG" JOBS

in this country to [REDACTED], but also of value to us through the intelligence information obtained. We have been operating this program for twelve years and to date the information obtained [REDACTED]

[REDACTED] In addition, the intelligence value of the information received has been beyond calculation.

We have used this technique on a highly selective basis, but with wide-range effectiveness, in our operations. We have several cases in the espionage field, for example, where through "black bag" jobs we determined that suspected illegal agents actually had concealed on their premises the equipment through which they carried out their clandestine operations.

Also through the use of this technique we have on numerous occasions been able to obtain material held highly secret and closely guarded by subversive groups and organizations which consisted of membership lists and mailing lists of these organizations.

This applies even to our investigation of the Ku Klux Klan. You may recall that recently through a "black bag" job we obtained the records in the possession of three high-ranking officials of a klan organization in [REDACTED]

These records gave us the complete membership and financial information concerning the klan's operation which we have been using most effectively to disrupt the organization and, in fact, to bring about its near disintegration.

It was through information obtained through our "black bag" operations that we obtained the basic information used to [REDACTED]

Through the same technique we have recently been receiving extremely valuable information concerning political developments [REDACTED], and we also have been able to use it most effectively in a number of instances.

✓ ✓
CONTINUED -- OVER

Greenberg/Gray 5973

~~CONFIDENTIAL~~

Memorandum to Mr. C. D. DeLoach
: "BLACK BAG" JOBS

cently through which we have obtained information concerning
owing [redacted] intelligence activities directed
this country.

In short, it is a very valuable weapon which we have
ed to combat the highly clandestine efforts of subversive
ements seeking to undermine our Nation.

CONCLUSION:

For your information.

*For more such techniques
must be used.*

THE WHITE HOUSE
WASHINGTON

~~CONFIDENTIAL~~

May 21, 1940

MEMORANDUM FOR THE ATTOR-
NEY GENERAL

I have agreed with the broad purpose of the Supreme Court decision relating to wire-tapping in investigations. The Court is undoubtedly sound both in regard to the use of evidence secured over tapped wires in the prosecution of citizens in criminal cases; and is also right in its opinion that under ordinary and normal circumstances wire-tapping by Government agents should not be carried on for the excellent reason that it is almost bound to lead to abuse of civil rights.

However, I am convinced that the Supreme Court never intended any dictum in the particular case which it decided to apply to grave matters involving the defense of the nation.

It is, of course, well known that certain other nations have been engaged in the organization of propaganda of so-called "fifth columns" in other countries and in preparation for sabotage, as well as in actual sabotage.

Keith and the case sub judice; no such belief could be defended as reasonable. See also note 67 supra.

Exhibit "D"

It is too late to do anything about it after sabotage, assassinations and "fifth column" activities are completed.

You are, therefore, authorized and directed in such cases as you may approve, after investigation of the need in each case, to authorize the necessary investigation agents that they are at liberty to secure information by listening devices direct[ed] to the conversation or other communications of persons suspected of subversive activities against the Government of the United States, including suspected spies. You are requested furthermore to limit these investigations so conducted to a minimum and to limit them insofar as possible to aliens.

/s/ F. D. R.

ORDER, 2d SERIES

It seems to me that in the present troubled period in international affairs, accompanied as it is by an increase in subversive activity here at home, it is as necessary as it was in 1940 to take the investigative measures referred to in President Roosevelt's memorandum. At the same time, the country is threatened by a very substantial increase in crime. While I am reluctant to suggest any use whatever of these special investigative measures in domestic cases, it seems to me imperative to use them in cases vitally affecting the domestic security, or where human life is in jeopardy.

As so modified, I believe the outstanding directive should be continued in force. If you concur in this policy, I should appreciate it if you would so indicate at the foot of this letter.

In my opinion, the measures proposed are within the authority of law, and I have in the files of the Department materials indicating to me that my two most recent predecessors as Attorney General would concur in this view.

Respectfully yours,
/s/ TOM C. CLARK
Attorney General

July 17, 1947 [sic]

I concur.

/s/ HARRY S. TRUMAN

OFFICE OF THE ATTORNEY
GENERAL
WASHINGTON, D. C.

July 17, 1946.

The President,

The White House.

My dear Mr. President:—

Under date of May 21, 1940, President Franklin D. Roosevelt, in a memorandum addressed to Attorney General Jackson, stated:

"You are therefore authorized and directed in such cases as you may approve, after investigation of the need in each case, to authorize the necessary investigating agents that they are at liberty to secure information by listening devices directed to the conversation or other communications of persons suspected of subversive activities against the Government of the United States, including suspected spies."

This directive was followed by Attorneys General Jackson and Biddle, and is being followed currently in this Department. I consider it appropriate, however, to bring the subject to your attention at this time.

Exhibit "E"

DECLASSIFICATION AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
DATE 02-27-2009

ADMINISTRATIVELY
~~CONFIDENTIAL~~

THE WHITE HOUSE
WASHINGTON

June 30, 1965

MEMORANDUM FOR THE HEADS
OF EXECUTIVE DEPARTMENTS
AND AGENCIES

I am strongly opposed to the interception of telephone conversations as a general investigative technique. I recognize

Exhibit "F"

Greenberg/Gray-5978

that mechanical and electronic devices may sometimes be essential in protecting our national security. Nevertheless, it is clear that indiscriminate use of these investigative devices to overhear telephone conversations, without the knowledge or consent of any of the persons involved, could result in serious abuses and invasions of privacy. In my view, the invasion of privacy of communications is a highly offensive practice which should be engaged in only where the national security is at stake. To avoid any misunderstanding on this subject in the Federal Government, I am establishing the following basic guidelines to be followed by all government agencies:

shall contain a list of any interceptions currently authorized and the reasons for them.

/s/ LYNDON B. JOHNSON

(1) No federal personnel is to intercept telephone conversations within the United States by any mechanical or electronic device, without the consent of one of the parties involved (except in connection with investigations related to the national security).

(2) No interception shall be undertaken or continued without first obtaining the approval of the Attorney General.

(3) All federal agencies shall immediately conform their practices and procedures to the provisions of this order.

Utilization of mechanical or electronic devices to overhear non-telephone conversations is an even more difficult problem, which raises substantial and unresolved questions of Constitutional interpretation. I desire that each agency conducting such investigations consult with the Attorney General to ascertain whether the agency's practices are fully in accord with the law and with a decent regard for the rights of others.

Every agency head shall submit to the Attorney General within 30 days a complete inventory of all mechanical and electronic equipment and devices used for or capable of intercepting telephone conversations. In addition, such reports

1. See 18 U.S.C.

FOR DEPARTMENT OF JUSTICE

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 02-27-2009 BY 65179 dmh/baw/sbs

PROGRAM The Today Show

STATION WRC TV
NBC Network

DATE April 11, 1978 7:00 AM

CITY Washington, D. C.

SUBJECT An Interview with Mark Felt

TOM BROKAW: ...And in our Washington studio at this hour, Mark Felt, the former Associate Director of the FBI. Yesterday he was indicted for conspiracy to violate the civil rights of the Weathermen, a radical group which was active in the '60s and early '70s. Indicted also was former FBI Director L. Patrick Gray and another associate. Now here is NBC's Carl Stern to talk with Mark Felt and his wife Audrey, who also feels very strongly that these indictments were a disgrace.

Carl, good morning.

CARL STERN: Thank you, Tom. Good morning.

Obviously we can't litigate this case on national television, but we can define some of the issues a little bit. First, Attorney General Bell yesterday said -- this has nothing to do with the indictments, per se -- that he was satisfied that whatever these plans were, and of course he regards them as illegal, that they did not originate outside the FBI, that it was solely an FBI matter.

Is that true?

MARK FELT: Of course I can't say what conversations Gray may have had with his superiors. But to the best of my knowledge, I think what the Attorney General said was correct, so far as I know personally.

STERN: And these plans, alleged plans: did these start in 1972, as the indictment alleges? The Kearney matter was dismissed because the Attorney General said that there was at least some question as to whether or not Mr. Hoover and one

thought that the Bureau was such a highly centralized--

MR. FELT: I know--

OSTROW: --responsible, almost military organization.

MR. FELT: I know, I know. And that's why--that's why it's so hard for me to realize that some of these things were going on while I was there that I didn't know about. But this is the case.

OSTROW: Well, there does seem to be a difference emerging between what you and former Assistant Director Miller recall about whether Mr. Gray--L. Patrick Gray--had a role in authorizing the '72-'73 break-ins. Mr. Miller seems to have a clear recollection that Mr. Gray said, we're going to resume the practice.

MR. FELT: Yes.

OSTROW: And you don't have any such recollection. Yet you were Mr. Gray's number two man, his principal aide. How can that be?

MR. FELT: Well, it is. I really have no strong, clear recollection of conversation with Gray where he specifically said yes, this is all right. My conversations were with Miller, and Miller told me of his conversations with Gray. However, you'd have to understand what was happening in the FBI at that time. Believe me, you were lucky to get Mr. Gray's ear for five minutes, because he was extremely busy. He was traveling all over the country. So perhaps one Assistant Director would talk to him for a few minutes today, another tomorrow, and much of what I got was second-hand.

(MORE)

Exhibit "H"

1 into the situation.

2 Q Did you inquire of Mr. Shackleford just who it
3 was they were bagging prior to the time you got the go ahead?

4 A No. I didn't.

5 Q Why not?

6 A (Pausing.) Well, I--I--well, I just didn't. I
7 felt that the fact that we had the authorizations were the
8 important thing and I didn't open up into that--into that--

9 Q You didn't think it was important that one of
10 your subordinates was doing something that was specifically
11 unauthorized by the Director of the F.B.I.?

12 A Well, I'm not saying that I didn't think it
13 important. I just didn't--my reaction was--didn't--was not
14 in the area of--of fixing responsibility or looking any
15 further into it.

16 My reaction was that here we had the program,
17 and here it was instituted again, and we'd go from here. I
18 don't--I don't have--perhaps I should have, but--particularly
19 in light of today's circumstances, but I didn't.

20 Q Do you have any information as to whether the
21 Attorney General of the United States was ever consulted
22 about Mr. Gray's decision to reinstitute black bag jobs?

23 A I have no idea.

24 Q Who else, to your knowledge, in the Bureau was
25 aware that Mr. Gray had authorized these black bag jobs

Exhibit "I"

1 the memoranda. These memoranda that, if there is a question
2 about whether or not they ever existed, if they can't be
3 found, there are two of the girls in the Bureau, it would
4 be Felt Secretary who I'm sure handled the filing of them
5 because one day I went over and she just happened to--on a
6 different matter altogether--she just happened to say that
7 something like, "I got one of your billy-dos here."

8 So, now, my secretary was the one, Mrs. Litzky,
9 who typed these.

10 BY MR. GARDNER:

11 Q Who made the remark about the "billy-dos?"

12 A Carol Tschude, Felt's secretary.

13 So, those two girls--I don't know whether they
14 knew what they were all about, but at least they knew that
15 this was something sneaky and sort of had an air of mystery
16 about it.

17 A JUROR: But you did not--there was no reason
18 in authorizing or going through the discussion of whether or
19 not one of these things were to be authorized or not.
20 There was no--in no instance did you go directly into Gray's
21 office and touched base with him?

22 THE WITNESS: No. This whole thing was--this
23 whole thing was set up on a very need-to-know type basis.
24 That was my point of view. And that kind of a situation is
25 like when you have a family secret and everybody knows

1 what the secret is, but the son or daughter talks to the
2 mother, and only the mother talks to the father, and the
3 father never talks to the kids about it. It was one of those
4 kinds of situations.

5 MR. GARDNER: Okay. Thank you very much, Mr.
6 Miller, and I'll let you know about Friday.

7 (Whereupon, the witness was excused.)
8

9 +++++
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2/6/79

Paul V. Daly

U. S. VS. GRAY, ET AL.

L. Patrick

Francis J. Martin
Criminal Division

Enclosed are four copies of documents in partial response to discovery requests by attorneys Brian Gettings and Frank W. Dunham, Jr. Circles around the request number in the request letters indicate the document was located. If the document was located and was determined to be not discoverable, the reason is set forth next to the number.

Enclosures (4)

PVD:vop (5)

NOTE: Documents furnished correspond with numbers 1 through 3 contained in the attorneys letter of 1/23/79.

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REC-9

62-118045-149

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2/5/79
[Signature]

Greenberg/Gray-5985

FEB 16 1979

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1/24/79

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- ☐ Unclassified
☐ Confidential
☐ Secret
☒ Top Secret (ENCL. ONLY)
☐ SCI

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Airtel _____

LHM _____

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Subject

GRAY, L. PATRICK

Originator of Material

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This serial has been removed and placed in the Special File Room of Records Branch.

Authority - 62-116065

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File Number

62-118045-150

PERMANENT SERIAL CHARGE-OUT

Greenberg/Gray-5986

Mr. Philip B. Heymann
Assistant Attorney General
Criminal Division

Director, FBI

UNAUTHORIZED DISCLOSURE OF
CLASSIFIED INFORMATION
(UNITED STATES V. L. PATRICK
GRAY, III, ET AL.)

1 - Mr. J. B. Adams
1 - Mr. J. J. McDermott
1 - Mr. W. O. Cregar
1 - Mr. H. N. Bassett

February 27, 1979

1 - Mr. P. V. Daly

1 -

1 -

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b7C

Reference is made to your memorandum dated January 12, 1979, requesting the FBI conduct the necessary damage assessment of the unauthorized disclosure to a Federal grand jury and defense attorneys in connection with the surreptitious entry investigation and that this Bureau request the Central Intelligence Agency (CIA) and the National Security Agency (NSA) to do the same with regard to their information. You requested the conclusions of all then be provided to Mr. Michael E. Shaheen, Jr., Counsel, Office of Professional Responsibility.

By letters dated January 30, 1979, CIA and NSA have been requested to prepare damage assessments.

A damage assessment relating to the sensitive program jointly conducted by this Bureau and the NSA which was disclosed to the Federal grand jury and defense attorneys has been prepared by the FBI Security Officer. This damage assessment, dated February 27, 1979, is extremely sensitive and is classified "Top Secret, Handle via COMINT Channels." In the interests of security and to avoid unnecessary further proliferation of the sensitive information, I am forwarding the assessment by courier to the Department Security Officer with a copy of this memorandum.

I request the Department Security Officer take whatever steps are appropriate to ensure control and accountability of the damage assessment. In addition to providing it to the Office of Professional Responsibility, I believe it should be furnished to the Security Officers of both the Civil Rights Division and the Criminal Division, and also to the Department Review Committee in accordance

62-117792

1 - 62-118045 (U.S. v. Gray, et al.)

DR:lfj

56 MAR 8 1979

62-118045
DUPLICATE YELLOW

NOT RECORDED

MAR 5 1979

Greenberg/Gary 5987

ORIGINAL FILED IN 62-117792-52

Mr. Philip B. Heymann
Assistant Attorney General
Criminal Division

with Title 28, Code of Federal Regulations, Part 17. The damage assessment contains some recommendations that the Department Review Committee may desire to consider in connection with its preparation of recommendations for the Attorney General.

- 1 - Assistant Attorney General
Office of Legal Counsel
- 1 - Assistant Attorney General
Civil Rights Division
- 1 - Mr. Leon Ulman, Chairman
Department Review Committee
- 1 - Mr. Michael E. Shaheen, Jr.
Counsel
Office of Professional Responsibility
- 1 - Mr. D. Jerry Rubino (Enclosure) BY COURIER
Security Officer
Department of Justice

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UP-060

R. W.

(FBI TRIAL)

(BY ED ROGERS)

WASHINGTON (UPI) - AN ATTORNEY CHARGED TODAY THAT THE GOVERNMENT PLANS TO DROP CHARGES AGAINST FORMER ACTING FBI DIRECTOR PATRICK GRAY AND MAKE "SCAPEGOATS" OF TWO OTHER FORMER TOP OFFICIALS CHARGED WITH ILLEGAL FBI BREAK-INS.

U.S. DISTRICT JUDGE WILLIAM BRYANT HAS CALLED A HEARING TODAY ON A GOVERNMENT MOTION TO DELAY A TRIAL THAT HAD BEEN SCHEDULED TO BEGIN MONDAY AND PERHAPS REQUEST SEPARATING GRAY'S TRIAL FROM THE OTHERS.

MARK FELT, GRAY'S TOP LIEUTENANT, AND EDWARD MILLER, DOMESTIC INTELLIGENCE DIRECTOR, CLAIM GRAY AUTHORIZED THEM TO CONDUCT ILLEGAL BREAK-INS IN SEARCHING FOR WEATHER UNDERGROUND FUGITIVES IN 1972-73. GRAY DENIES IT.

"I THINK THE MOTION FOR SEVERANCE IS A PRELIMINARY STEP TO THE ULTIMATE EVENT THAT PAT GRAY WILL NEVER BE TRIED AND MR. FELT AND MR. MILLER WILL BE THE SCAPEGOATS FOR THE WHOLE THING," SAID BRIAN GETTINGS, FELT'S ATTORNEY, IN AN INTERVIEW.

ASKED WHY HE REACHED THAT CONCLUSION, GETTINGS SAID, "COMMON SENSE."

GRAY'S ATTORNEY, ALAN BARON OF BALTIMORE, DISAGREED, AND SAID PROSECUTORS HAVE FINALLY DECIDED IT WOULD BE UNFAIR TO PLACE GRAY ON TRIAL WITH THE OTHER TWO.

UPI 03-02 12:47 PES

79 MAR 14 1979

WASHINGTON CAPITAL NEWS SERVICE

Greenberg/Gray-5989

FBI/DOJ

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D

FBI

WASHINGTON (AP) -- THE JUSTICE DEPARTMENT ASKED A FEDERAL JUDGE TODAY TO DELAY THE TRIAL OF THREE FORMER HIGH FBI OFFICIALS SO THE GOVERNMENT CAN DECIDE HOW TO PREVENT DISCLOSURE OF CLASSIFIED MATERIAL.

PROSECUTOR BARNET D. SKOLNIK ASKED U.S. CHIEF DISTRICT JUDGE WILLIAM B. BRYANT TO SET AN APRIL 16 TRIAL DATE FOR W. MARK FELT, FORMER NO. 2 OFFICIAL AT THE FBI, AND EDWARD S. MILLER, FORMER HEAD OF THE BUREAU'S INTELLIGENCE DIVISION.

SKOLNIK ALSO INDICATED THE DEPARTMENT WANTS A SEPARATE TRIAL FOR FORMER ACTING FBI DIRECTOR L. PATRICK GRAY III, WHO ORIGINALLY WAS TO BE TRIED WITH MILLER AND FELT.

ALL THREE ARE CHARGED WITH CONSPIRING TO VIOLATE CIVIL RIGHTS OF ENDS AND RELATIVES OF THE RADICAL WEATHER UNDERGROUND BY APPROVING ILLEGAL BREAK-INS AT THEIR HOMES IN THE EARLY 1970S.

BRYANT ASKED FOR TODAY'S HEARING AFTER SKOLNIK SENT HIM A LETTER WEDNESDAY SEEKING THE POSTPONEMENT. THE GOVERNMENT'S ACTION REPORTEDLY WAS PROMPTED BY BRYANT'S SECRET RULING LAST WEEK THAT PROSECUTORS HAD TO TURN NATIONAL SECURITY INFORMATION OVER TO DEFENSE ATTORNEYS.

SKOLNIK, IN HIS LETTER TO BRYANT, SAID ^{62-118015-A} ~~167~~ ^{11-8015-A} MAR 13 1979 RAISES A NUMBER OF DIFFICULT PROBLEMS FOR THE GOVERNMENT REGARDING ...
ULTIMATE PUBLIC DISCLOSURE OF CLASSIFIED DATA AT TRIAL.

79 MAR 14 1979

WASHINGTON CAPITAL NEWS SERVICE

Greenberg/Gray-5990

FBI/DOJ

"IN SEEKING ACCEPTABLE RESOLUTIONS OF THOSE PROBLEMS, GOVERNMENT COUNSEL WILL NEED TO CONSULT WITH A NUMBER OF GOVERNMENT OFFICIALS AND TO NEGOTIATE WITH THEM THE VARIOUS AVAILABLE OPTIONS," SKOLNIK WROTE.

SKOLNIK'S LETTER ASKED THE COURT TO PROCEED ON THE ASSUMPTION THAT GRAY WILL BE TRIED AFTER FELT AND MILLER. WHILE THE LETTER DID NOT EXPAND ON THE REASONS FOR A SEPARATE TRIAL, ATTORNEYS FOR GRAY AND MILLER ALREADY HAVE ASKED FOR SEPARATE TRIALS BECAUSE THEY SAY THEIR CLIENTS WOULD END UP ACCUSING EACH OTHER.

AP-WX-0302 1323EDT

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WASHINGTON CAPITAL NEWS SERVICE

FBI/DOJ

Greenberg/Gray-5992

~~SECRET~~

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

TO : Mr. Bassett *HAB*
FROM : P. V. Daly *PVD*
SUBJECT: *L. Patrick*
U.S. VS GRAY ET AL.

DATE: 2/6/79
PVD
13 July 212

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~~SECRET~~
PURPOSE: To advise of the results of in camera hearing in captioned matter.

DETAILS: On 1/31/78, an in camera proceeding was held in chambers of Chief Judge William Bryant. In addition to the attorneys and myself, representatives of CIA and NSA were present. The purpose of the hearing was to present arguments concerning discovery and the various motions in limine filed by the Government in this matter. *(C)*

The Government sought to have the court deny defendants Miller and Felt the mistake of fact mistake of law defense and thereby obviate the problems of production of highly sensitive material pursuant to court ordered discovery.

EX-125 REC 20 62-178045-151

During the course of the hearing I responded to questions concerning departmental knowledge of the Bureau's use of surreptitious entries. The reasons for certain categories of redactions and the reason for withholding in toto all cooperative foreign intelligence service reports which the court had ordered produced.

Judge Bryant indicated concern at the withholding of what may be relevant evidence from the defendants especially the material that they would have had access to and may have been the basis for their decision to conduct surreptitious entries. While he did not question the withholding of the information he did state he would insure the defense got all relevant evidence

MAR 13 1979

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 -
- 1 - Mr. Bassett
- 1 - Mr. Cregar
- 1 - Mr. Mintz
- 1 - Mr. Moore
- 1 - Mr. Daly

b6
b7C

~~SECRET~~

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DATE 02-27-2009

pvd:pfb (9)

(CONTINUED-OVER)



7 9 MAR 16 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan
Greenberg/Gray 5993

FBI/DOJ

~~SECRET~~

P. V. Daly to Mr. Bassett memorandum
Re: U.S. vs Gray et al

regardless of its origin or sensitivity. Al Baron, counsel for L. Patrick Gray, raised questions concerning redactions of the documents surrounding [redacted] surreptitious entry. These redactions were made to protect two highly sensitive sources.

(S)

[redacted] explained the necessity for the redactions to Judge Bryant. The Government has also filed a motion in limine to protect against disclosure of this information during trial.

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Judge Bryant stated he would rule on the various motions by February 9, 1979.

RECOMMENDATIONS:

For information.

APPROVED: *[Signature]*

Director

Assoc. Dir.

Dep. AD Adm.

Dep. AD Inv.

Adm. Serv. _____

Crim. Inv. _____

Ident. _____

Intell. _____

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Greenberg/Gray-5994

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SUITE 550
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WILLIAM L. STAUFFER, JR.
JOANNE F. ALPER
JAMES T. DEVINE
FRANK W. DUNHAM, JR.

OF COUNSEL
GERRY LEVENBERG

VIRGINIA OFFICES
1400 NORTH UHLE STREET
COURTHOUSE SQUARE
ARLINGTON, VIRGINIA 22216
(703) 525-2260

FEDERAL GOVERNMENT

February 27, 1979

DECLASSIFICATION AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
DATE 05-01-2009

Honorable Griffin Bell
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Judge Bell:

L. Patrick
This letter is an appeal to you on behalf of Mark Felt, one of the three defendants in the so-called "FBI Case", styled United States v. Gray et al. currently pending in the United States District Court for the District of Columbia. We appeal to you because of your dual role--one as the nation's chief law enforcement officer and the other as one of the nation's chief intelligence officers. It is our view that you are in a unique position to assess the merits of proceeding with this prosecution for reasons that will become apparent herein.

EX-125 REC 20 62-118045-152
We recognize that you made your decision some time ago--when you authorized the indictment. But there have been several significant developments since then which, had they been known at the time, might have caused you to view the matter differently. While we recognize that it is not our function to inform the Attorney General, since you are presumably aware of everything that is done in your name, as a practical matter we know this is seldom true. We write this letter because of our belief that considerations which we believe are important may have been overlooked by the prosecutors. The prosecutors are not responsible for, and thus cannot fully appreciate, the impact of these considerations on the intelligence community and how the needs of the intelligence community may be affected by continuing with this case.

file
4- Daley-RVD

9 MAR 16 1979

Greenberg/Gray-5995

Honorable Griffin Bell
February 27, 1979
Page Two

We emphasize your dual role because much of what happened in 1972 in the Weatherman investigation can be best understood by a person with a full appreciation of the FBI's intelligence function as opposed to its law enforcement function. Through discovery, we have learned that the Weatherman investigation itself was, and still is, classified as a national security matter. In 1972, the Weatherman investigation was transferred from the Division in the FBI which normally handles fugitive matters to the Division which handles intelligence and national security matters. Thus the Bureau agents, who were charged with the responsibility for capturing the Weatherman fugitives, were trained intelligence agents who quite frankly had, by training, practice, and habit become accustomed to the use of certain techniques in investigative matters which a fugitive squad would not even consider utilizing.

Thus it was that the initial impetus to use intelligence gathering investigative techniques arose quite naturally among intelligence agents in the field, who then sought headquarters approval to use these time-tested intelligence techniques in a matter they viewed as important to the national security. The only technique resulting from the field "impetus" complained of in the instant indictment was the so-called warrantless "bag job", or surreptitious entry, unaccompanied by electronic surveillance. Use of this technique in national security matters solely on the authority of the Director had an historical precedent of over 30 years behind it when it was implemented in this case. Although in 1972, the practice of obtaining specific Attorney General approval for national security break-ins to install telephone surveillances (TESURS) and microphone surveillances (MISURS) was well established, no such procedure for Attorney General approval had been established for the less intrusive national security break-in without an electronic surveillance purpose.

(U) Because the Weatherman investigation was and is a national security matter involving agents of and/or collaborators with foreign powers, the question arises as to whether the warrantless entries in question were constitutionally permissible on national security grounds. While it may have been clear, post-Keith (6/19/72),^{1/} that certain intelligence techniques could not be utilized by the executive branch without a judicial warrant, Keith was limited in application to investigations involving purely domestic threats to national security. Keith did not in any way affect the Executive's authority in matters involving foreign agents or collaborators with foreign agents. Since the FBI knew, through NSA wire and cable intercepts, materials from the "watch list", and other documents, which the District Court has now ruled we are entitled to receive, that the Weathermen were in "cahoots", so to speak, with foreign governments, the teachings of Keith appear to be without impact to the facts of this case. Moreover, Keith was limited solely to electronic surveillance. ~~TS~~ - Umbr

^{1/} United States v. United States District Court, 407 U.S. 297.

Honorable Griffin Bell
February 27, 1979
Page Three

The prosecutors tell us that, assuming the existence of the national security predicate, the entries were still illegal even though a warrant may not have been required because the Attorney General had not personally approved each entry. Thus, the focus of this case has turned from the failure to obtain a warrant to the failure to get specific Attorney General approval. In so shifting the focus, the prosecutors have told the Court in camera, and intend to argue publicly, that all warrantless entries unrelated to electronic surveillance over the past thirty (30) years were illegal, i.e., criminal, because none had specific Attorney General approval. This will certainly come as a shock to both present and retired intelligence agents when they read that acts which were committed by them in the interest of national security and for which they were officially commended are crimes and, but for the statute of limitations, only prosecutive discretion prevents their federal indictment.

At the relevant times in 1972 our client was aware of the history of the utilization by the FBI of the technique of surreptitious entry in national security matters, and that such entries, when unaccompanied by electronics, were approved by the Director and not by the Attorney General. Mr. Felt relied on a belief in the legality of this prior conduct in concluding that such entries, when authorized by the Director, were not unconstitutional.

(U) The prosecutors cannot concede the practices of the past to be non-criminal without according our client, who relied on that past practice as precedent, the benefit of that same concession. The prosecutors are thus proceeding on a legal and factual theory that does not seek to distinguish between surreptitious entries against the Communists in the 50's, embassies in the 60's, or terrorists such as the Weathermen in the 70's -- all, according to the prosecution are equally criminal because each entry was not approved in advance by the Attorney General. ~~JS~~

It does not seem to matter to the prosecutors that the Attorneys General of the past, while not specifically approving the entries, knew of the FBI's utilization of such techniques upon the Director's specific approval, were glad to receive the fruits thereof, and never objected; it does not seem to matter that the Director, L. Patrick Gray III, who authorized the use of the techniques involved in this case, will not be prosecuted. Instead, only officials who relied upon Mr. Gray's authorization will be the subject of prosecution, since it now appears that the case as to L. Patrick Gray III cannot proceed, not because the prosecutors believe he is innocent, but because of the need to protect specific national security information which has been held relevant to his defense. (The prosecutors may attempt to put off for now the final decision on Mr. Gray by severing his case and scheduling it for trial after the trial of Mr. Felt and Mr. Miller. But this is only avoiding what they now know to be inevitable, i.e. that Mr. Gray will never be prosecuted.)

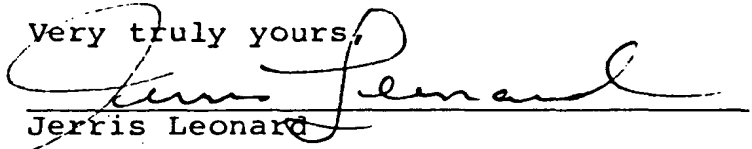
Honorable Griffin Bell
February 27, 1979
Page Four

The indictment is evidence that the Department of Justice believes, as our client contends, that Gray authorized or approved the conduct complained of in the indictment. It would surely be an anomalous result if our client were required to stand trial for carrying out the directions of his superior while the superior is excused such an ordeal. The unfairness of such anomaly becomes even more apparent when it is considered that the prosecutors possess no evidence that the grand jury testimony of Mr. Felt is false in any material respect, whereas the prosecutors have never believed the story Mr. Gray told to the grand jury and apparently have evidence to support this belief.

It should be remembered that there may have been no case against Mr. Felt had he not waived his prerogative under the Fifth Amendment (he was retired at the time) and voluntarily accepted responsibility for certain conduct of agents in the field by acknowledging the grant of authority from headquarters. When this case is viewed in the context of other similar cases, i.e., the declination on Helms because he believed he had the authority to authorize national security break-ins and the dismissal of Kearny, because it was believed that responsibility should be at a higher level, the complete lack of equity and justice in a dismissal of the case against Gray unaccompanied by concomitant dismissal of the case as to Mr. Felt and Mr. Miller is apparent.

We submit that our client did no more than guess wrong as to the legality of his conduct under the Fourth Amendment in a national security matter. We respectfully submit that you need only consider the Humphrey-Truong matter to appreciate the unfair hazard to public officials charged with protecting the national security of making criminal an erroneous but good-faith guess as to what conduct is permissible under the Fourth Amendment in a national security matter. When that "guess" and subsequent conduct is the product of instructions received from a superior such as Mr. Gray, it is patently wrong to excuse Mr. Gray for any reason and yet proceed against one who relied on Mr. Gray.

Very truly yours,


Jerris Leonard

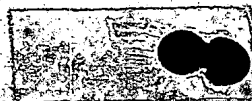

Brian P. Gettings


Frank W. Dunham, Jr.

FWD:evb

cc: Francis J. Martin, Esq.
Barnet Skolnik, Esq.
Judge Webster
D. N. Siemer

Greenberg/Gray-5998



- 1 - Mr. J. B. Adams
- 1 - Mr. J. J. McDermott
- 1 - Mr. W. O. Cregar

Mr. Philip B. Heymann
Assistant Attorney General
Criminal Division

February 27, 1979

Director, FBI

- 1 - Mr. H. N. Bassett
- 1 - Mr. P. V. Daly
- 1 - [Redacted]

b6
b7C

UNAUTHORIZED DISCLOSURE OF
CLASSIFIED INFORMATION
(UNITED STATES V. L. PATRICK
GRAY, III, ET AL.)

Reference is made to your memorandum dated January 12, 1979, requesting the FBI conduct the necessary damage assessment of the unauthorized disclosure to a Federal grand jury and defense attorneys in connection with the surreptitious entry investigation and that this Bureau request the Central Intelligence Agency (CIA) and National Security Agency (NSA) to do the same with regard to their information. You requested the conclusions of all then be provided to Mr. Michael E. Shaheen, Jr., Counsel, Office of Professional Responsibility.

By memorandum dated February 27, 1979, to you and other recipients of this memorandum, I advised a copy of the damage assessment prepared by the FBI Security Officer was being furnished to Mr. D. Jerry Rubino, Security Officer, Department of Justice, for appropriate circulation within the Department. In the interests of security and to avoid unnecessary further proliferation of the sensitive information, only one copy of the assessment was forwarded to the Department.

By a copy of this memorandum directed to Mr. Rubino, I am furnishing a damage assessment provided by Mr. Daniel B. Silver, General Counsel, NSA, dated February 22, 1979 (NSA serial GC/50/79). I request that this also be furnished to appropriate Department officials for their review in accordance with Title 28, Code of Federal Regulations, Part 17.

- 1 - Assistant Attorney General
Office of Legal Counsel
- 1 - Assistant Attorney General
Civil Rights Division
- 1 - Mr. Leon Ulman, Chairman
Department Review Committee
- 1 - Mr. Michael E. Shaheen, Jr., Counsel
Office of Professional Responsibility
- 1 - Mr. D. Jerry Rubino, Security Officer
Department of Justice

DUPLICATE YELLOW

NOT RECORDED

167 MAR 5 1979

(Enclosure)

BY CARRIER

57 MAR 14 1979

62-117792

62-118045 (U.S. v. Gray, et al.)

Greenberg/Gray-5999

DR:lfj (16)

~~SECRET~~

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

TO : Mr. Bassett *HMB*

FROM : *pd* Mr. Daly *L. Patrick*

SUBJECT: *0* U. S. VS. GRAY, ET AL.

DATE: 3/1/79

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

PURPOSE:

To respond to Director's question as to whether a promise of confidentiality was given to the Los Angeles source [redacted]

b2
b7D

DETAILS:

(S) The source in question furnished the information which allegedly is the primary basis for former Acting Director Gray authorizing a surreptitious entry in Dallas at the residence of [redacted]. The information furnished by this source has been deemed material and relevant to the defense of Mr. Gray in this matter by the Court.

In response to the Director's question, Los Angeles teletype 10-1-71 states clearly his cooperation with the FBI was predicated on our express promise of confidentiality. A copy of that teletype is attached.

RECOMMENDATION:

EX-125

None. For information.

REC 20

62-118045-153

18 MAR 13 1979

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - [redacted] b6
- 1 - Mr. Mintz b7C
- 1 - Mr. Moore
- 1 - Mr. Bassett

PVD:vdp (9)

ENCLOSURE

EXEMPTED FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(1)
DATE 03-05-2009

APPROVED: *W*

Adm. Serv. _____
Crim. Inv. _____

Legal Coun. _____

Director _____

Ident. _____

Plan. & Insp. _____

Assoc. Dir. _____

Intell. _____

Rec Mgnt. _____

Dep. AD Adm. _____

Laboratory _____

Tech. Servs. _____

Dep. AD Inv. _____

Training _____

Public Affs. Off. _____

~~SECRET~~



MAR 16 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Greenberg/Gray-6007

FBI/DOJ

NR017 LA CODE

10:32 PM NITEL 10/1/71 DAB

TO DIRECTOR (157-14621)

FROM LOS ANGELES (157-3846) (P) 2P

CONF. INFT.

AKA, EM DASH BPP

b2
b6
b7C
b7D
b7F

INTERVIEWED SEPTEMBER TWENTYTWO, TWENTYFOUR AND

THIRTY, LAST. AND AGREED TO PROVIDE INFORMATION TO BUREAU

ON CONFIDENTIAL BASIS WITH PROVISION RELATIONSHIP MAINTAINED

IN STRICTEST CONFIDENCE. HE STATED EXTREMISTS WITH WHOM

HE IS ASSOCIATED ARE DANGEROUS, WILLING TO COMMIT MURDER AND

COMMITTED TO REVOLUTIONARY MOVEMENT IN UNITED STATES, AND IF

HIS RELATIONSHIP WITH FBI REVEALED, HIS LIFE AND THAT OF

FAMILY WOULD BE IN JEOPARDY.

ON

ARRESTED BY

LOS ANGELES PD ON MISDEMEANOR

INCARCERATED IN

CELESTATION

MEMBERS OF BLACK PANTHER PARTY (BPP), AND SUBJECTS OF

INVESTIGATION.

AND

END PAGE ONE

NOT RECORDED

b2
b7D

NOV 14 1973

ENCLOSURE

62-118045-153 Rosenberg/Gray-6008

LA 157-3846

PAGE TWO

WHILE INCARCERATED IS IN POSITION TO DEVELOP INFORMATION REGARDING THEIR PLANS, INVOLVEMENT IN [REDACTED] AND DIRECTION OF PRISON MOVEMENT. IT IS NOTED [REDACTED] HAS ASSOCIATED WITH AND HAS BEEN ACCEPTED BY BPP ACTIVISTS THROUGHOUT THE COUNTRY AND HAS POTENTIAL TO PROVIDE INVALUABLE INFORMATION REGARDING EXTREMIST MOVEMENT.

b6
b7C
b7D
b7F

IDENTIFYING DATA REGARDING [REDACTED] ASSIGNED PRIORITY II ON SECURITY INDEX, CONTAINED IN RESPECTIVE ONE FIVE SEVEN FILES. LOS ANGELES WILL NOT REMOVE [REDACTED] FROM SECURITY INDEX UNTIL POTENTIAL AS SOURCE FULLY EVALUATED. BUREAU AUTHORITY REQUESTED TO OPERATE [REDACTED] AS INFORMANT, HENCEFORTH IDENTIFIED AS [REDACTED]
END CONF. INFT.

b2
b6
b7C
b7D
b7F

[REDACTED]
b6
b7C

FORM 712-A 9&D

Greenberg/Gray-6009

~~CONFIDENTIAL~~

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

TO : Mr. Bassett *HMB*

DATE: 3/1/79

FROM : *me* P. V. Daly *L. Patrick*

SUBJECT: U.S. vs GRAY, ET AL

Assoc. Dir. *me*
Dep. AD Adm. *me*
Dep. AD Inv. *me*
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. *HMB*
Rec. Mgnt. *HMB*
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

58
PURPOSE: To advise of Departmental letter requesting postponement of trial to 4/16/79 and of the current status of discovery in this matter.

RECOMMENDATION: For information.

EXEMPTED FROM AUTOMATIC
DECLASSIFICATION

AUTHORITY DERIVED FROM:

FBI AUTOMATIC DECLASSIFICATION GUIDE

EXEMPTION CODE 25X(1)

DATE 03-05-2009

APPROVED: *me*

Director *me*

Assoc. Dir. *me*

Dep. AD Adm. *me*

Dep. AD Inv. *me*

Adm. Serv. _____

Crim. Inv. _____

Ident. _____

Intell. _____

Laboratory _____

Legal Coun. _____

Plan. & Insp. *HMB*

Rec. Mgnt. *HMB*

Tech. Servs. _____

Training _____

Public Affs. Off. _____

DETAILS: On 2/28/79, Francis J. Martin of the Department furnished me a copy of a letter dated 2/28/79 submitted to Chief Judge William Bryant. (copy attached). The letter informs Judge Bryant of the difficulty being encountered by the Government in complying with discovery and preparing for trial in view of his rulings on various in limine motions and the trial protective order on 2-22-79. The focal point of the concern is the sensitive material which has now been ordered produced to the defense.

Also, the letter notifies the court that a final decision to sever Gray from defendants Miller and Felt has not been made. However, the letter suggests the court and defense proceed with trial preparations for this trial on the basis that severance will be sought. Martin stated the determination not to seek severance of Gray from the

Enclosure *me* ENCLOSURE

EX-125 REC 2062-118045-154
MAR 13 1979

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - Mr. Cregar
- 1 - Mr. Moore

- 1 - Mr. Mintz
- 1 - Mr. Bassett
- 1 -
- 1 - Mr. Daly *HMB*

b6
b7C

PVD:lge *lge*
(9)

(CONTINUED - OVER)

~~CONFIDENTIAL~~



MAR 16 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

~~CONFIDENTIAL~~

Daly to Bassett Memo
Re: U.S. vs Gray, et al

other defendants in this trial was made by the Deputy Attorney General (DAG).

Barnet D. Skolnik, who is designated a special employee of the Department to try this case, advised me on 2/27/79 that he was notifying the DAG on that date that he was going to leave the Department and return to his law firm. He cited the pressures of the amount of work that has backed up in that law firm as being the reason for this decision. Skolnik stated he was also telling the Deputy he would, of course, return and try the case when and if it did come to trial and that in his absence Frank Martin would be handling all aspects of the case.

Representatives of the Bureau from the Intelligence Division and Criminal Investigative Division have met with Martin concerning the two key problem areas concerning the FBI, as viewed by the Department; the two areas being information furnished by cooperative foreign governments and the informant problem concerning surreptitious entry. In connection with the cooperative foreign government material, we are endeavoring to gather information to answer certain questions Martin proposed. The informant problem will be the subject of a letter from the Department requesting certain action by the Bureau. This particular aspect is being directed by the DAG's office and the exact nature of the action is not known at this time. However, tentatively, it has been decided that a review will be conducted of this problem by the Bureau and the Department, separately, and separate recommendations made as to the necessity of the protection of the informant involved.

b6
b7c

~~CONFIDENTIAL~~



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

February 28, 1979

BDS:ams

Honorable William B. Bryant
Chief Judge
U.S. District Court
for the District of Columbia
U.S. Courthouse
3rd & Constitution Avenue, N.W.
Washington, D.C. 20001

Dear Judge Bryant:

As a consequence of the Court's rulings of February 2 regarding the government's motions in limine, government counsel have tentatively concluded that severance of defendant Gray may well be required. We will know for sure with a short time, following completion of some lines of inquiry which are now being actively pursued, and we will communicate further with the Court and all counsel at that time. Accordingly, we suggest that the Court and all counsel proceed now upon the assumption that such a severance will be required, and make plans for a trial of defendants Felt and Miller to occur as soon as possible (see below), with trial of defendant Gray to follow thereafter.

As to defendants Felt and Miller, the Court's February 22 ruling with respect to the trial availability of a Barker-Martinez defense raises a number of difficult problems for the government regarding both discovery and ultimate public disclosure of classified data at trial. In seeking acceptable resolutions of those problems, government counsel will need to consult with a number of government officials and to negotiate with them the various available options. The process will take time--one month is a conservative estimate. We accordingly request leave to pursue those matters with the general understanding that a government submission of position papers or other report to the Court

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HEREIN IS UNCLASSIFIED
DATE 02-27-2009 BY 65179 dmh/baw/sbs

Greenberg/Gray-6012


62-118045-

154

will be expected in late March or early April.

As to a trial date, we suggest that trial of defendant Felt and Miller be rescheduled from March 5 to April 16, subject of course to the calendars of the Court and defense counsel.

Very truly yours,


BARNET D. SKOLNIK
Special Assistant U.S. Attorney
for the District of Columbia

cc: Alan I. Baron, Esquire
Brian P. Gettings, Esquire
Thomas A. Kennelly, Esquire

Mr. Francis J. Martin
Criminal Division
FBI Task Force

February 27, 1979

PVD Special Agent Paul V. Daly

FEDERAL GOVERNMENT

L. Patrick
UNITED STATES v. GRAY, ET AL

58
Pursuant to your oral request of February 26, 1979, I have received the following answers to your questions from the Los Angeles Office.

The Los Angeles Office stated that [redacted] individuals, [redacted] were privy to information concerning the planned activities by [redacted]

b7D

They also stated that to their knowledge the information concerning this matter has never been publicly released. In response to your request that we ascertain the current whereabouts of [redacted] and the source, Los Angeles has advised that the current whereabouts are unknown.

b6
b7C

In accordance with your instructions, no overt investigation was conducted to determine their whereabouts. As you were previously informed, we did determine that the source was [redacted]

b7D

[redacted] California. A current identification record check at FBI Headquarters disclosed no further information helpful in locating the source.

Should you desire, we will, of course, conduct an active investigation to determine the whereabouts of the source and of [redacted]

b6
b7C

MAR 13 1979

NOTE: Los Angeles teletypes captioned [redacted] dated 1/16/79 and 2/27/79, contain the background information relating to the material contained in this memorandum.

b2
b7D

.. Dir. _____
.. AD Adm. _____
.. AD Inv. _____
Dir.: 1 - Mr. Adams
.. Servs. 1 - Mr. McDermott
.. Inv. 1 - Mr. Mintz

1 - Mr. Moore
1 - [redacted]
1 - Mr. Bassett
1 - Mr. Daly

b6
b7C

.. oratory. PVD:jam
.. al Coun. (10)
.. & Insp. _____
.. Mgnt. _____
.. h. Servs. _____
.. ining _____
.. c Affs. Off. _____
.. hone Rm. _____
.. tor's Sec. _____

APPROVED: *WAW*

Director
Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.

Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____

Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. *HW*
Tech. Servs. _____
Training _____
Public Affs. Off. _____

delivered to Martin 2-27-79 by [signature]

FBI/DC

Greenberg/Gray-6014

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION**Memorandum**TO : Assistant Director
Administrative Services Division

DATE: 2-6-79

FROM : Legal Counsel *Jam*SUBJECT: UNITED STATES v. L. PATRICK GRAY, ET AL.
CRIMINAL NUMBER 78-000179, DISTRICT OF COLUMBIA

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.: _____
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

At 2 p.m., on February 6, 1979, Alan Baron, counsel for L. Patrick Gray in captioned prosecution, called and requested assistance in arranging for interviews to be scheduled on Tuesday, February 13, 1979, commencing at 9:30 a.m. in a conference room in the FBI Headquarters Building. He requested that the following persons be scheduled for such interviews with approximately one hour allocated for each interview to the extent that they are available in the Washington, D.C., area:

<div style="border: 1px solid black; width: 150px; height: 15px;"></div> b2	<div style="border: 1px solid black; width: 150px; height: 15px;"></div> Retired 11-30-58
✓ Robert T. Kelly b7	<div style="border: 1px solid black; width: 150px; height: 15px;"></div> b6
<div style="border: 1px solid black; width: 150px; height: 15px;"></div> b6	<div style="border: 1px solid black; width: 150px; height: 15px;"></div> b7C
<div style="border: 1px solid black; width: 150px; height: 15px;"></div> b5	<div style="border: 1px solid black; width: 150px; height: 15px;"></div> WFO

The Administrative Services Division is requested to determine the current locations of the persons included in Mr. Baron's list and request them to appear for interview by Mr. Baron in Room 7426 on February 13, 1979. The Administrative Services Division is also requested to determine the availability of these persons and list an appropriate time schedule of interviews.

RECOMMENDATION:

EX-114

REC-80

62-118045-156
5 MAR 5 1979

That the Administrative Service Division advise Alan Baron, telephone number 301-547-0500, of the names and times of persons who will be available for interview by Mr. Baron on February 13.

- 1 - Mr. Mintz
 1 - Personnel files of
 Robert T. Kelly,

APPROVED:

Director _____
 Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____

Adm. Serv. *Jam*
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____

JAM:bpr
(12)

Greenberg/Gray-6015

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

PERS. REC. UNIT

FBI/DOJ

MAR 2 5 1979

53 JUN 13 1979

FD-654
Revised
03-15-2005

FEDERAL BUREAU OF INVESTIGATION
PERMANENT SERIAL CHARGE-OUT

Date 1-17-08

Document Classification:

- ☐ Confidential
☐ Secret
☒ Top Secret

Document Type:

- ☒ Letter
☐ LHM
☐ Report
☐ Teletype
☐ EC
☐ Airtel
☐ Memo
☐ Facsimile
☐ Misc.
☐ Email

Enclosure _____

Attachment _____

SCI TYPE:

- ☐ SI*
☐ TK*
☐ GAMMA*
☐ BYE*
☐ HCS*
☐ SSRP*
☐ COSMIC(NATO)*
☐ Other Comint Channels (specify)

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HEREIN IS UNCLASSIFIED
DATE 02-27-2009 BY 65179 dmh/baw/sbs

FD-501 Number _____

Date of Mail 2-22-79

Originating Office or agency DOJ / DAG

This serial has been removed and placed in:

☒ Special File Room, FBIHQ

☐ FBIHQ, Room _____

☐ _____

Field Office-Room # Container # or Other Location Where Material Is Stored

62-118045-156X (Sec. 5)

File # and Serial

*requires special handling

PERMANENT SERIAL CHARGE-OUT

Greenberg/Gray-6017

On 2/7/79, Alan Baron, counsel for L. Patrick Gray, was advised that the following interview schedule had been arranged for him on 2/13/79 at FBIHQ:


b6 9:30 AM
b7C 10:30 AM
11:30 AM
1:30 PM
2:30 PM



Robert T. Kelly


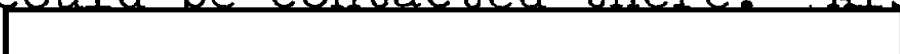
*no interview
conducted*

Mr. Baron was advised that 

 preferred that Mr. Baron contact him at his office in Alexandria.

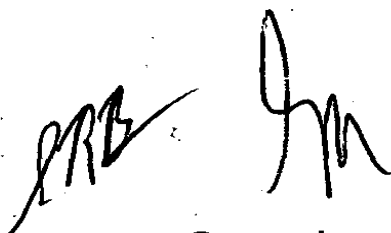
b6
b7C

Mr. Baron was also informed that

 were assigned to our Springfield and Memphis offices and could be contacted there. Also, that  had retired, and that if he wished to contact them we would attempt to notify them of his desires so they could contact him directly, on their own. Mr. Baron did not request that this be done at this time.

b6
b7C

Recommendation: None, for information.

Two handwritten signatures, one in cursive and one in a more stylized script.

Greenberg/Gray-6018

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 02-27-2009 BY 65179 dmh/baw/sbs

62-118045-156X1
CHANGED TO
62-117792-56X1

JUL 25 1979

NBH/psf

Greenberg/Gray-6019

Mr. Francis J. Martin
FBI Task Force
Department of Justice

FEDERAL GOVERNMENT

March 12, 1979

Special Agent Paul V. Daly

L. Patrick

UNITED STATES V. GRAY, ET AL

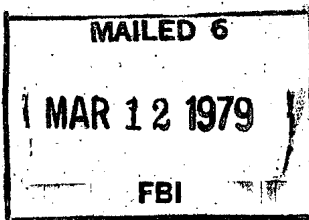
Reference is made to my memorandum of
February 27, 1979.

In accordance with our discussion of March 9,
1979, I have arranged to have Special Agent [redacted]
[redacted] available in Washington on March 12, 1979, to
discuss his contemplated contact with [redacted]
[redacted] Special Agent [redacted] was one of the handling
Agents of this source and was the recipient of the
information concerning the proposed activity by the
Al Patch.

b2
b6
b7C
b7D

For your information the Los Angeles Office
advised they have located [redacted] place
of employment.

b6
b7C



EX-114

REC-124

b2
b6
b7C
b7D

22 MAR 13 1979

NOTE: Martin, on 3/9/79, requested [redacted] discuss his
contact with the Los Angeles source with him prior to
contact. Martin was offered the opportunity to talk with
the source should the source agree to such contact. At
this time, Martin is noncommittal about contacting source.
Los Angeles teletype, 3/9/79, captioned "[redacted]"
[redacted], "advised they have located that source."

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____

Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____

5-1111-13 1979

Telephone Rm. _____
Director's Sec'y _____

1 - [redacted]
1 - Mr. McCurnin
1 - Mr. Bassett
1 - Mr. Daly

b6
b7C

Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____

Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____

APPROVED: _____
Director _____
Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____

7 9 MAR 29 1979

Greenberg/Gray-6020

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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PAGE 1 OF 3

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3/22/79

CLASSIFICATION

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FM DIRECTOR FBI

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AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(6)
DATE 02-27-2009

14 ~~SECRET~~

UNITED STATES VERSUS L. PATRICK GRAY III, ET AL.;

12 DISCOVERY PROCEEDINGS.

ON MARCH ONE FIVE, LAST, U. S. DISTRICT COURT JUDGE
ORDERED GOVERNMENT TO COMPLETE DISCOVERY PROCEEDINGS BY
MARCH THREE ZERO, NEXT. PROSECUTION IS PREPARING TO PRESENT
TO COURT PAREN EXPARTE AND IN CAMERA PAREN AT THAT TIME ALL
MATERIALS ORDERED PRODUCED IN DISCOVERY WHICH HAVE NOT YET
BEEN FURNISHED THE DEFENSE, ALONG WITH A CLAIM OF EXECUTIVE
PRIVILEGE BY ATTORNEY GENERAL AS TO THESE DOCUMENTS AND
INFORMATION. SOME OF THESE MATERIALS ORIGINATED WITH SIX
DIFFERENT FOREIGN GOVERNMENTS AND RELATE TO SDS AND/OR
WEATHERMAN INVESTIGATIVE RESULTS. LEGAT, PARIS, INFORMATION

(S) CONSISTS OF

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APPROVED BY

WOC/AM

DRAFTED BY

JLT/BAM {7}

DATE

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TELE EXT.

469L

- 1 - MR. J. B. ADAMS
- 1 - MR. J. J. MC DERMOTT
- 1 - MR. J. A. MINTZ
- 1 - MR. H. N. BASSETT
- {ATTN: PAUL DALY}
- 1 - MR. W. O. CREGAR
- 1 - [REDACTED]

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FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

MAR 22 1979

16 MAR 23 1979

SEE NOTE PAGE 4...

7 9 APR 1979

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Greenberg/Gray-6021

FBI/DOJ

DEPARTMENT OF JUSTICE
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IN CONNECTION WITH THE CLAIM OF PRIVILEGE, DEPARTMENT
HAS REQUESTED FBI DETERMINE WHETHER THE FOREIGN GOVERNMENTS
OBJECT TO THE RELEASE OF THEIR MATERIAL. ~~(S)~~

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FOR YOUR INFORMATION DEFENSE COUNSEL AND DEFENDANTS
HAVE CLEARANCE FOR MATERIAL UP TO AND INCLUDING SCI. ~~(S)~~

(U)

10

YOUR SOURCES SHOULD BE ADVISED THAT THE ITEMS FURNISHED
BY THEM WILL BE SPECIFICALLY IDENTIFIED IF THEY DESIRE TO
REVIEW SAME FOR POSSIBLE DISCLOSURE TO THE DEFENSE. ~~(S)~~

(U)

8

APPROVAL BEING SOUGHT IS TO USE SECURITY INFORMATION,
AND TO IDENTIFY THE FOREIGN GOVERNMENT SOURCE IN A CRIMINAL
PROSECUTION AT DISCOVERY STATE ONLY. DISCLOSURE WOULD BE TO
APPROPRIATELY CLEARED DEFENSE COUNSEL AND DEFENDANTS. ~~(S)~~

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HANDLE PROMPTLY. SUTEL BY A.M. OF MARCH 26, 1979.

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CONTACT WITH AUTHORITATIVE SPOKESMAN IS DESIRED, BUT CONTACT

2

SHOULD NOT BE DELAYED TO ACHIEVE IDEAL HIGH-LEVEL CONTACT. (U)

~~C & E 1927, REASON 2, DRD MARCH 22, 1979.~~

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Greenberg/Gray-6022

FBI/DOJ

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FEDERAL BUREAU OF INVESTIGATION
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Greenberg/Gray-6023

FBI/DOJ

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~~CONFIDENTIAL~~

PAGE FOUR

NOTE: COORDINATED WITH SA PAUL V. DALY, DEFENSE
DISCOVERY SPECIAL, RECORDS MANAGEMENT DIVISION.
RESTATEMENTS REQUESTED MARCH 19, LAST, BY FRANK MARTIN,
TRIAL ATTORNEY, AFTER CONFERRING WITH ROBERT KEUCH,
DEPUTY ASSISTANT ATTORNEY GENERAL. RELEVANT INFORMATION
(S) FROM [] SURFACED 3/22/79. ~~EX~~

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Greenberg/Gray-6024

UNITED STATES VS. L. PATRICK GRAY, ET AL.

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DATE OF REVIEW 4-18-99
all para are marked.

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Memorandum to Mr. Martin from Mr. Daly
Re: United States vs. L. Patrick Gray, et al.

(U)

In summary you were advised by SA [] that the source did not know how many people knew of the contemplated terrorist act. The source stated to his knowledge [] did not discuss this contemplated activity with anyone but the source and others who were to be directly involved. It was the source's understanding, based on his conversations with [] had told an individual or individuals outside the plan the details. This prompted [] decision to abort this activity. Source did not know who [] had told or whether it was one or more than one person. You were advised by me that our files disclose that up to seven people, all with terrorist backgrounds, were aware of the plan. (S)

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(U)

The source stated [] and that public disclosure of the information he furnished would place both him and his family in jeopardy. Source believed disclosure of the information would surface his identity and that [] and others would not hesitate to kill him. (S)

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APPROVED:	Adm. Serv. _____	Legal Coun. _____
Director <i>W. H. W.</i>	Crim. Inv. _____	Plan. & Insp. _____
Assoc. Dir. _____	Ident. _____	Rec. Mgnt. <i>For</i>
Dep. AD Adm. <i>DM</i>	Intell. _____	Tech. Servs. _____
Dep. AD Inv. _____	Laboratory _____	Training _____
		Public Affs. Off. _____

~~SECRET~~

4/12/79

Paul V. Daly
Federal Bureau of Investigation

FEDERAL GOVERNMENT

U. S. VS. W. MARK FELT, ET AL.
DISCOVERY PROCEEDINGS

Francis J. Martin
Department of Justice

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 02-28-2009 BY 65179 dmh/baw/sbs

In response to your request, this memorandum will outline our interpretation and handling of item F-4 of Defendant Felt's Motion for Discovery and Inspection; and the court's granting of this portion of the motion in its 8/17/78 order. This has been our mutual interpretation since the issue was discussed with you shortly after the order was signed.

To our knowledge, only one organization was "designated" or approved by the Attorney General under his FCI Guidelines, which had previously been designated or approved under his Domestic Guidelines. From the outset, a response by Departmental personnel to this portion of the court-ordered discovery has been contemplated, since the question could be answered by a review of the Department's records. In accordance with this interpretation, an affidavit was prepared by the Department in late 1978 covering this single redesignated organization.

We rejected any notion that the order included as a "designation" any administrative assignment of supervisory responsibility within FBI Headquarters for any given organization. Such assignments and reassignments have been made over the years for management purposes, without being seen as having any legal significance, until 1976 when the Attorney General's FCI and Domestic Guidelines went into effect.

NOTE: On Friday, 4/6/79 the Department raised the issue of whether Venceremos Brigade (VB) should be included as a designation under the order. Although highly visible because of its relationship to Weatherman, this relationship is not the issue at hand. As a redesignation, VB is indistinguishable from the organizations, large and small, the supervisory responsibility for which has been shifted within FBIHQ for administrative

Assoc. Dir. _____
Dep. AD Adm. _____ 1 - Mr. McDermott
Dep. AD Inv. _____ 1 - Mr. O'Brien
Asst. Dir.: _____
Adm. Servs. _____ 1 - Mr. Daly
Crim. Inv. _____ 1 - Mr. Tierney
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Laboratory _____ JLT:bas
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Director's Sec'y _____

Greenberg/Gray-6027

55 JUN 15 1979

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62-118045

Memorandum from Mr. Daly to Mr. Martin
Re: U. S. VS. W. Mark Felt, Et Al.
Discovery Proceedings

purposes before and after the 1972 Keith decision.

VB investigations were ordered handled as "contact" or "travel" cases under Section 105, Manual of Instructions by airtel to all SACs 12/2/74 captioned "VENCEREMOS BRIGADE (VB), INTERNAL SECURITY - CUBA - VB." They were thus handled as the 1974 equivalent of FCI cases for at least one year following the travel, after which they could be handled under the reporting rules set forth in Bureau airtel to all SACs 8/16/74 captioned "Subversive and ~~Extremist~~ Investigations of Individuals; Streamlined Reporting."

The AG subsequently approved investigating VB under the FCI Guidelines on the basis of the Bureau's Investigative Summary prepared 10/7/76. This was the first designation by the AG of the VB, and its prior administrative assignment as a domestic matter was not at issue at the time.

The 8/17/78 court order covers "...documentary materials since June, 1972 which reveal the redesignation of previously designated domestic intelligence subjects to foreign intelligence subjects."

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Svcs. _____
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Telephone Rm. _____
Director's Sec'y _____

TO : Mr. O'Brien

DATE: 4/13/79

FROM : J. L. Tierney

SUBJECT: U. S. VS. JOHN J. KEARNEY
U. S. VS. L. PATRICK GRAY III, ET AL.
U. S. VS. W. MARK FELT, ET AL.
DISCOVERY PROCEEDINGS

PURPOSE: To advise of relocation of records and status of
Defense Discovery Special.

DETAILS: The Defense Discovery Special mounted for the
above-captioned prosecutions and located in Records
Management Division (RMD), Room 6888 since 1/24/78 has moved.

The trial of Mr. Gray has been severed and is being held in abeyance. The prosecution contemplates trying Messrs. Felt and Miller first. The prosecution contends discovery was completed by 3/30/79, the court-ordered deadline. Completion is contested by the defense. Motions to dismiss for failure to comply with discovery as ordered by the court are pending before the court. The prosecution opposes dismissal and has asked for an in camera, ex parte hearing to justify its position. The Attorney General is claiming Executive Privilege for material from foreign sources and a very sensitive FBI source situation. The prosecution argues substantial compliance and characterizes the noncompliance as de minimis, of insufficient substance to warrant dismissal, and seeks to reopen the question of applicability of Barker-Martinez defense. The prosecution may appeal any dismissal to the Circuit Court.

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - [REDACTED]
- 1 - Mr. Colwell
- 1 - Mr. Cregar
- 1 - Mr. Long
- 1 - Mr. Mintz
- 1 - Mr. Moore
- 1 - Mr. O'Brien
- 1 - [REDACTED]
- 1 - [REDACTED]

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(CONTINUED-OVER)

62-118045



MAY 10 1979

- 1 - Mr. Tierney

JLT:baw

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53 JUN 13 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan
Greenberg/Gray-6029

FBI/DOJ

ORIGINAL FILED IN 62-117958

Memorandum from Mr. Tierney to Mr. O'Brien
Re: U. S. VS. John J. Kearney, U. S. VS.
L. Patrick Gray III, et al., U. S. VS.
W. Mark Felt, et al., Discovery
Proceedings

Although regular, discovery-related demands on our time are expected to continue, the need for full-time services of the remaining personnel has ended. Subject to temporary recall as the need arises, and long-term reassignment if the prosecution is preparing documentary evidence for trial, their locations are as follows:

ASAC Paul V. Daly	AX	683-2680	
Joseph L. Tierney	FOIPA Rm. 6786	Ext. 4802	
[REDACTED]	RMD Rm. 5634	Ext. 4844	b6
James Brennan	RMD, CRU	Ext. 3575	b7C

Records maintained in Room 6888 are in three categories and have been disposed of as follows:

1. Records directly related to discovery, including working copies of files and originals of some New York Field Office Files, consist of approximately 20 cabinets and are located in RMD space in room 4859. They may be obtained for the time being by contacting [REDACTED] or Mr. Brennan. b6 b7C
2. Records created during SENSTUDY and HOUSESTUDY are being assimilated into Bureau files, as they were intended to be, and may be obtained through normal file procedures. They consist of 10 cabinets.
3. Records compiled during the investigative phase under Assistant Director Richard E. Long are stored separately in room 1427D, still under limited access. Four cabinets of these records which have recently been located in Room 6888 have been moved to Room 1427D. They may be obtained for the time being through [REDACTED] or Mr. Brennan. These records will be assimilated into Bureau files as soon as they are no longer needed for this prosecution. The details of this assimilation have not yet been worked out, as the retrieval of copies of Bureau records now in the possession of the Department is not yet worked out, but they will presumably be maintained intact in the Special File Room of RMD. b6 b7C

RECOMMENDATION: None. For information.

APPROVED: *WUB*
Director *WUB*
Assoc. Dir. *WUB*
Dep. AD Inv. *WUB*
Dep. AD Inv. *WUB*

Adm. Serv. _____	Legal Coun. <i>WUB</i>
Crim. Inv. _____	Plan. & Insp. <i>WUB</i>
Ident. _____	Rec. Mgnt. <i>WUB</i>
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- 2 -

Greenberg/Gray-6030

UNITED STATES GOVERNMENT

Memorandum

TO : See Addressees Below

DATE: April 25, 1979

FROM : Francis J. Martin
Criminal Division

SUBJECT: Hearing Before Chief Judge Bryant - United States v. Felt, et al.

For your information, due to problems that arose with respect to the schedules of defense counsel and the Court, Judge Bryant has rescheduled the chambers hearing in United States v. Felt from April 30 to Wednesday May 16, at 10:00 a.m. The subject matter will be the various unresolved discovery disputes and the defense motions to dismiss the indictment.

Addressees:

Philip B. Heymann
Assistant Attorney General

[Redacted] National Security Agency

Paul Michel
Associate Deputy Attorney General

[Redacted] Central Intelligence Agency

Robert L. Keuch
Deputy Assistant Attorney General

REC-104

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Mary C. Lawton
Office of Legal Counsel

Peter F. Rient
Office of Improvements in the Administration of Justice

62-118045-162

Ronald A. Stern
Criminal Division

20 MAY 2 1979

Lubomyer M. Jachnycky
Criminal Division

Paul V. Daly Joe Tierney
Federal Bureau of Investigation

62-118045

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Greenberg/Gray-6031

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7 MAY 8 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

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UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

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Telephone Rm. _____
Director's Sec'y _____

TO : Mr. Bassett *Hub*

DATE: 3/27/79

FROM : Mr. Daly *pd*

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WHERE SHOWN OTHERWISE

SUBJECT: ⁶ U. S. VS GRAY ET AL

(S)

[Redacted]

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DETAILS:

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RECOMMENDATION:

Attached letterhead memorandum be made available
for defense review.

Enclosure

ENCLOSURE

EXEMPTED FROM AUTOMATIC
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EXEMPTION CODE 25X(1)
DATE 02-28-2009

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Director _____
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Dep. AD Inv. _____

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Crim. Inv. _____

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REC-112

62-118045-163

MAY 16 1979

1 - Mr. Bassett
1 - Mr. Daly
PVD:r fw (3)

Greenberg/Gray-6032

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58 MAY 16 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

~~SECRET~~

1 - Mr. P. V. Daly

1 - [REDACTED]

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Date: April 2, 1979

BY LIAISON

To: [REDACTED]

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From: [REDACTED]

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Security Officer

Subject: UNAUTHORIZED DISCLOSURE OF
CLASSIFIED INFORMATION
(UNITED STATES V. L. PATRICK
GRAY, III, ET AL.)

This is in reference to my memorandum dated January 30, 1979, advising the Assistant Attorney General, Criminal Division, Department of Justice, had requested damage assessments be conducted relating to disclosures of pertinent information in connection with the Department of Justice's surreptitious entry investigation. Damage assessments have been prepared by the FBI and National Security Agency in accordance with the Criminal Division's request and furnished to the Department by memorandum dated February 27, 1979.

It would be appreciated if you would expedite preparation of the Central Intelligence Agency's damage assessment in this matter.

ALL INFORMATION CONTAINED
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62-117792-

1 - 62-118045 (U.S. v. Gray, et al.)

DR:lfj
(6)

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191 APR 25 1979

318 DUPLICATE YELLOW

62 MAY 1 1979

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Greenberg/Gray-6035

ORIGINAL FILED IN 62-117792-

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION*Memorandum*

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 Telephone Rm. _____
 Director's Sec'y _____

TO : *Ex 10/2*
Mr. O'Brien

DATE: 4/3/79

FROM : *Ch*
Mr. Tierney

SUBJECT: U.S. vs L. Patrick Gray III, et al.;
 U.S. vs W. Mark Felt, et al
 Discovery Proceedings

st
C
PURPOSE: To record changed title

DETAILS: Prosecution of Messrs. Gray, Felt and Miller was instituted by the Department with a joint trial contemplated and discovery proceedings commenced on that basis.

The prosecution of Mr. Gray has been severed and delayed, to be held after the trial of Messrs. Felt and Miller.

Correspondence previously captioned U.S. vs Gray, et al., will for a time be captioned U.S. vs Felt, et al., as set forth above. No new file need be opened.

RECOMMENDATION: None. For information and indexing. *@*

1 - Mr. O'Brien
 1 - Mr. Tierney

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 DATE 02-28-2009 BY 65179 dmh/baw/sbs

(3)
3 JLT:fmk

4 - [Signature]
62-118045-164
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 MAY 16 1979

Greenberg/Gray-6036



58 MAY 16 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

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TO DIRECTOR IMMEDIATE 088-02
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OF INVESTIGATION
COMMUNICATIONS SECTION

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~~CONFIDENTIAL~~

UNITED STATES VERSUS L. PATRICK GRAY, III; ET AL; DISCOVERY
PROCEEDINGS.

RETOKCAB MARCH 22, 1979.

ON MARCH 30, 1979, THE DOCUMENTS IN QUESTION FORWARDED TO
LEGAT TOKYO BY BUREAU ROUTING SLIP WERE MADE AVAILABLE TO

[REDACTED]

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[REDACTED].

ON APRIL 3, 1979, [REDACTED]

[REDACTED] ADVISED HE HAD BEEN ASKED BY [REDACTED] TO RESPOND TO

PREVIOUS REQUEST. AT THIS TIME [REDACTED] ADVISED THAT [REDACTED]

DOES NOT WANT DOCUMENTS IN QUESTION RELEASED UNDER ANY CIRCUM-

STANCES AS TO DO SO WOULD PRODUCE NEGATIVE EFFECTS IN OUR LONG

ESTABLISHED RELATIONS. [REDACTED] POINTED OUT THAT NO CHANGE

IN THIS STANCE IS ANTICIPATED AND THAT THEY DESIRE THE

RELATIONSHIPS BETWEEN THE FBI AND [REDACTED] TO REMAIN ON A

CONFIDENTIAL BASIS AS IN THE PAST. IN VIEW OF THE ABOVE NO

DISCLOSURE SHOULD BE MADE TO ANYONE OUTSIDE THE FBI.

~~C AND E 1813; REASON 2, DRD MARCH 30, 1993.~~

BT

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FBI AUTOMATIC DECLASSIFICATION GUIDE
DATE 02-28-2009

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Public Affs. Off.	
Telephone Rm.	
Director's Sec'y	

Legal Counsel
Referred to
Records Management
4/3/79
[Signature]

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62-118045-165

MAY 16 1979

62-118045

Greenberg/Gray-6037

58 MAY 16 1979

1 - Mr. P. V. Daly

1 -

1 -

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Mr. Philip B. Heymann
Assistant Attorney General
Criminal Division

April 9, 1979

Director, FBI

UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION
(UNITED STATES V. L. PATRICK GRAY, III, ET AL.)

By memorandum to Ms. Mary C. Lawton, Deputy Assistant Attorney General, Office of Legal Counsel, dated October 5, 1978, I advised of unauthorized disclosures of sensitive national security material in connection with the surreptitious entry investigation, requested corrective action be taken, that the matter be reviewed as a possible violation of Title 18, U. S. Code, Section 793 (18 USC 793), and that the provisions of Title 28, Code of Federal Regulations, Part 17.55 (28 CFR 17.55), be effected. Your memorandum of January 12, 1979, and a memorandum to Ms. Lawton of the same date advised you had concluded the information provided did not indicate a violation of 18 USC 793. You requested the FBI, Central Intelligence Agency and National Security Agency conduct damage assessments and furnish the latter to the Department's Office of Professional Responsibility.

My memorandum to you dated February 14, 1979, enclosed a 13-page chronological summary regarding notice provided Department attorneys relating to the safeguarding of classified national security information in the surreptitious entry investigation. In that memorandum, I again requested you review this matter to determine if action is warranted under the regulations of 28 CFR 17. Specifically, I requested Part 17.55 and Part 17.38 of the Code be complied with, that responsibility for the unauthorized disclosure be determined, and that this matter be considered by the Department Review Committee (DRC) at the earliest possible date so that recommendations could be provided to the Attorney General. I also requested I be provided reports of the appropriate Security Officers, as well as the Security Officer of the Department and of the DRC.

DUPLICATE YELLOW

62-117792

① - 62-118045 (U.S. v. Patrick Gray, et al.)

SEE NOTE PAGE 2

DR:lfj
(12)

62 MAY 1 1979

NOT RECORDED
191 APR 25 1979

Greenberg/Gray-6038

ORIGINAL FILED IN 62-117792-88

Mr. Philip B. Heymann
Assistant Attorney General
Criminal Division

By memoranda dated February 27, 1979 (two), copies of damage assessments in this matter prepared by the FBI and National Security Agency were furnished to the Department Security Officer. I understand these were made available for your review.

I would appreciate being advised of the status of this inquiry.

- 1 - Assistant Attorney General
Office of Legal Counsel
- 1 - Assistant Attorney General
Criminal Division
- 1 - Mr. Leon Ulman, Chairman
Department Review Committee
- 1 - Mr. Michael E. Shaheen, Jr.
Counsel
Office of Professional Responsibility
- 1 - Mr. D. Jerry Rubino
Security Officer
Department of Justice

NOTE: Although unauthorized disclosures in this matter were first furnished to the Department six months ago, no information has been received that inquiries have been initiated within the Department as is required by 28 CFR 17. No answer has been received to the Director's inquiry of 2/14/79. At the meeting of the DRC on 3/20/79, this matter was brought up by the FBI Security Officer, and the Chairman of the DRC disclaimed any responsibility for the inquiry, indicating the Director's request for the inquiry had been directed to the Criminal Division.

Mr. Bassett

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UNAUTHORIZED DISCLOSURES OF
CLASSIFIED INFORMATION
(UNITED STATES V. L. PATRICK
GRAY, III, ET AL.)

1 - Mr. J. B. Adams
1 - Mr. J. J. McDermott
1 - Mr. W. O. Cregar
2/13/79

1 - Mr. J. A. Mintz
1 - Mr. D. W. Moore, Jr.
1 - Mr. H. N. Bassett
1 - Mr. P. V. Daly
1 - [REDACTED]
1 - [REDACTED]

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PURPOSE: To set forth information indicating this Bureau was precluded by the Department of Justice in placing classification markings on documents and that Department attorneys were furnished extensive information regarding the need for classification and safeguarding of sensitive material in connection with the Civil Rights Division's, and later the Criminal Division's, surreptitious entry investigation, and to recommend a summary relating to such notice be provided to the Assistant Attorney General, Criminal Division, and other appropriate Department officials.

SYNOPSIS: On 10/5/78, the Director delivered a memorandum to Deputy Assistant Attorney General, Office of Legal Counsel, expressing concern regarding the handling of national security information in connection with this matter. He requested the Department conduct a review to determine if there was violation of Title 18, United States Code, Section 793, which prohibits the release of communications intelligence to unauthorized recipients, as well as of the Code of Federal Regulations. Assistant Attorney General, Criminal Division, responded 1/12/79 stating prosecution was inappropriate because the Bureau did not follow Executive Order and Department regulations, attorneys received insufficient notice and used information in good faith, and there was lack of criminal intent. Also, he advised the disclosure of classified Sensitive Compartmented Information could not be shown as negligence on the part of attorneys. Attached chronological summary sets forth extensive information indicating notice relating to need for classification provided to the Department as early as 6/29/76. The summary indicates continuing efforts were made to ensure the classification and safeguarding of Bureau material in the custody of Department and all such requests failed to prevent disclosures. FBI is conducting damage assessment at request of Department and will

Enclosures
62-117792

L. Patrick

62-118045 -

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62-118045 (U.S. v. Gray, et al.)

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(11)

53 JUN 13 1979

NOT RECORDED

44 MAR 15 1979
Greenberg/Gray-6040

62-117792-3641
62-118045-1857
Original

Memorandum [] to Mr. Bassett
Re: Unauthorized Disclosures of Classified Information b6
(United States v. L. Patrick Gray, III, et al.) b7C
62-117792

advise National Security Agency and Central Intelligence Agency to also do so. There is no information indicating an inquiry has been conducted by the Department to affix responsibility and report not furnished as required to the Security Officer of the Department or Department Review Committee.

RECOMMENDATION: That the attached memorandum enclosing a copy of the summary outlining notice provided to the Department relating to the safeguarding of classified information in the surreptitious entry investigation be sent to the Assistant Attorney General, Criminal Division, with copies to other Department divisions and officials involved, suggesting this matter be reconsidered and handled in accordance with the requirements of the Code of Federal Regulations.

DETAILS: On 10/5/78, the Director personally delivered a memorandum to Ms. Mary C. Lawton, Deputy Assistant Attorney General, Office of Legal Counsel, expressing his concern regarding the handling of national security information in connection with the matter of United States v. L. Patrick Gray, III, et al. In his memorandum, it was indicated that as early as 7/26/76 the Assistant Attorney General had been advised of the FBI's concern. The memorandum of 10/5/78 requested the Department conduct a review regarding what appeared to be a violation of Title 18, United States Code, Section 793 (18 USC 793), which prohibits the release of communications intelligence to unauthorized recipients, as well as possession by an unauthorized individual. He also requested the provisions of Title 28, Code of Federal Regulations, Part 17.55 (28 CFR 17.55), relating to the loss or possible compromise of classified information, be complied with, as well as consideration be given concerning the notification requirement of Executive Order 12036.

CONTINUED - OVER

Memorandum [] to Mr. Bassett

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b7C
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By memorandum dated 1/12/79, Philip B. Heymann, Assistant Attorney General, Criminal Division, responded to the Director's memorandum to Ms. Lawton by attaching, as an enclosure, a copy of a memorandum of the same date informing her of his conclusion that the information provided by the Director did not indicate a possible violation of 18 USC 793. Additionally, Mr. Heymann, in his memorandum, expressed the view that the required damage assessment should be conducted by the originating agencies, i.e., the FBI, Central Intelligence Agency (CIA), and National Security Agency (NSA), that the latter two agencies furnish their conclusions to the Bureau, and that the results then be referred to Michael E. Shaheen, Jr., Counsel, Office of Professional Responsibility, Department of Justice.

In his memorandum to Ms. Lawton, Mr. Heymann stated criminal prosecution under Title 18 would be inappropriate because (1) Bureau Headquarters did not follow the procedures set forth in the Executive Order and Departmental regulations which require that each document bear a classification marking; (2) the attorneys received insufficient notice and used the information in good faith; and (3) there is a complete lack of criminal intent. Also, he advised the Criminal Division concluded the disclosure of classified Sensitive Compartmented Information to the grand jury and the defendants' attorneys in the course of the investigation could not be shown to be "negligence in violation of statute and to do so would require proving the attorneys acted in wanton and reckless disregard for the security of the documents and that they knew or should have known that such conduct threatened the security."

Ms. Lawton, by memorandum to Mr. Heymann, with a copy for the Director, FBI, dated 1/23/79, indicated she concurred with the Criminal Division but considered it important to correct some misunderstandings. She noted she had advised the Criminal Division the disclosure, which primarily raised the question of an espionage law violation, involved a document which indicated on its face (which was read before the grand jury) that it contained communications intelligence information. Secondly, she indicated the Department should have been on notice that the documents contained classified

CONTINUED - OVER

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information as a copy of a memorandum prepared by the Bureau's Security Officer dated 10/20/78 noted the question of reviewing documents for proper classification markings had been raised at the onset of the investigation and the FBI was refused the opportunity to review and mark classified information. Citing additional evidence that the FBI had put the Government attorneys on notice, she indicated, however, she did not disagree with the conclusion that prosecution is inappropriate.

We have reviewed records relating to notice provided to the Department since 1976 in connection with the surreptitious entry investigation. The attached chronological summary sets forth extensive information indicating notice relating to the need for classification and protection of the material was furnished to the Attorney General, the Deputy Attorney General, the Assistant Attorney General of the Civil Rights Division, and the Director, Security and Administrative Services Staff (Department Security Officer), as early as 6/29/76. A memorandum of that date pointed out in considerable detail requirements relating to protecting Sensitive Compartmented Information, including operations in the foreign intelligence area where the FBI had cooperated with CIA or NSA. It was indicated the information involved in the investigation may necessitate special clearances and coordination with other components of the Intelligence Community and that attorneys associated with defense counsel may require clearance. Also, possible problems relating to the storage of and access to classified material, as well as defense counsels' preclusion from its further dissemination without Department authority, were clearly set forth.

The attached summary also outlines that after this Bureau's Security Officer attempted to effect classifications and to instruct Agents that their counsel might need clearance, the Assistant Attorney General, by memorandum dated 7/9/76, instructed he be removed and insulated from matters relating to the investigation. Later, when the FBI advised the Department that FBI personnel assigned to assist the Civil Rights Division were selected by design because they had little or no experience in matters involving classified information and requested an opportunity to brief

Memorandum [] to Mr. Bassett

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them, the Assistant Attorney General, Civil Rights Division, by memorandum dated 8/10/76, indicated such action was unnecessary as he was completely familiar with the Executive Order, had taken necessary steps to ensure attorneys involved in the investigation were complying fully with all regulations, and had personally reviewed the FBI task force operation and was satisfied it was handling classified information in accordance with proper procedures. (Assistant Director Long has advised that although he questioned the policy of furnishing all information, including classified information, personally to the Civil Rights Division, it was made clear to him that he and members of the task force were under the direct supervision of the Civil Rights Division and the Assistant Attorney General of that division advised him the FBI was part of the Justice Department and, as such, whatever information was released to the Civil Rights Division would remain within the Department.)

The chronological summary attached indicates continuing efforts, which can be documented through copies of memoranda furnished to Department officials, were made to ensure the classification and safeguarding of Bureau material in the custody of the Civil Rights Division and later the Criminal Division, and all such requests failed to prevent the resulting disclosures. The information documented would appear to be probative that the Department attorneys may have acted in a wanton or reckless disregard for the security of documents that they knew or should have known were of a sensitive classifiable nature requiring protection. Considerable additional information is available to document other violations by Department attorneys of Executive Order and Department regulations regarding procedures for safeguarding national security information.

The recommendation of the Assistant Attorney General, Criminal Division, that the FBI conduct a damage assessment and refer the results to the Department's Office of Professional Responsibility, is contrary to the Director's request in his memorandum to Ms. Lawton dated 10/5/78 and not in accordance with the Code of Federal Regulations.

CONTINUED - OVER

Memorandum [] to Mr. Bassett
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Title 28, Part 17.55, of the Code requires the officer or employee of the Department who has knowledge of the possible loss or compromise of classified national security information to promptly report and confirm in writing the circumstances to the Security Officer of his division. The latter is required to furnish notice to the originating office and any interested agency, prepare an assessment of the damage, and conduct an inquiry to determine corrective measures and to recommend appropriate administrative action. While Ms. Lawton referred the matter to the appropriate Security Officers of the divisions involved, there is no information any inquiry was conducted to affix responsibility, notice of the compromise to appropriate agencies was delayed, and a report was not furnished as is required to the Security Officer of the Department and the Department Review Committee, it being noted the latter is required to make recommendations to the Attorney General.

Mr. Philip B. Heymann
Assistant Attorney General
Criminal Division

Director, FBI

UNAUTHORIZED DISCLOSURE OF
CLASSIFIED INFORMATION
(UNITED STATES V. L. PATRICK
GRAY, III, ET AL.)

1 - Mr. J. B. Adams
1 - Mr. J. J. McDermott
1 - Mr. W. O. Cregar
1 - Mr. J. A. Mintz

February 14, 1979

1 - Mr. D. W. Moore, Jr.
1 - Mr. H. N. Bassett
1 - Mr. P. V. Daly

1 -
1 -

b6
b7C

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 02-28-2009 BY 65179 dmh/baw/sbs

Reference is made to your memorandum to me dated January 12, 1979, and your memorandum to Ms. Mary C. Lawton, Deputy Assistant Attorney General, Office of Legal Counsel, of the same date, both captioned "Unauthorized Disclosure of Classified Information," which respond to my memorandum dated October 5, 1978, requesting a review be conducted to determine if the unauthorized disclosures in the Department's surreptitious entry investigation are in violation of statute, the Code of Federal Regulations, and Executive Order. Your memorandum to Ms. Lawton advised prosecution under Title 18, United States Code, Section 793, would be inappropriate as the Bureau did not follow classification marking procedures set forth in Executive Order and Departmental regulations, the Department attorneys involved received insufficient notice and used the information in good faith, and there is a complete lack of criminal intent. Your memorandum also pointed out that in your opinion, "gross negligence" could not be shown, indicating it would be necessary to prove the attorneys acted in wanton or reckless disregard for the security of the documents entrusted to them.

Ms. Lawton, by memorandum to you dated January 23, 1979, provided information indicating the attorneys had sufficient notice of the classification of material in their possession but concurred with your conclusion that prosecution was inappropriate.

Enclosed is a copy of a chronological summary regarding notice provided to Department attorneys relating to the safeguarding of classified national security information in the surreptitious entry investigation conducted by

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1 - 62-118045 (U. S. v. Gray, et al.)

DR-118045-11879
6-118045-11879
(18)

DUPLICATE YELLOW

53 JUN 13 1979

NOT RECORDED
44 MAR 15 1979
Greenberg/Gray-6046

ORIGINAL FILED IN 62-117792-59

Mr. Philip B. Heymann
Assistant Attorney General
Criminal Division

the Civil Rights Division and later by the Criminal Division. I believe the information in this summary will indicate the Department attorneys from the onset of this investigation in 1976 received extensive notice relating to the need to classify and safeguard the information provided to them. Also, it is important to note the procedure established at the request of the Assistant Attorney General, Civil Rights Division, which caused unmarked classifiable documents to be provided to the Department, was accomplished through an official of this Bureau who, in effect, was temporarily assigned to the Department and under the direct supervision of the Department as relates to this matter. In spite of continuing notice provided even after the Criminal Division assumed responsibility for the investigation, and also after being provided considerable notice regarding the sensitivity of the classifiable information, unauthorized disclosures continued.

I again request you review this matter to determine if action is warranted under the requirements of Title 28, Code of Federal Regulations, Part 17. Specifically, I request the provisions of Part 17.55 of the Code be complied with and that responsibility for the unauthorized disclosures be determined. I would appreciate reports of the appropriate Security Officers be provided to me, as well as to the Security Officer of the Department and the Department Review Committee as is required.

I also request that, in accordance with Part 17.38 of the Code, this matter be considered by the Department Review Committee at the earliest feasible date and that recommendations be provided to the Attorney General.

In accordance with your request in your memorandum dated January 12, 1979, I have requested Central Intelligence Agency and National Security Agency to prepare damage assessments relating to the unauthorized disclosure by the Department of information which originated within these agencies. This Bureau's Security Officer is preparing a similar assessment and all will be provided in accordance

Mr. Philip B. Heymann
Assistant Attorney General
Criminal Division

with the Code of Federal Regulations to appropriate Department officials, as well as to the Office of Professional Responsibility as you requested.

Enclosure

- 1 - Assistant Attorney General (Enclosure)
Office of Legal Counsel
- 1 - Assistant Attorney General (Enclosure)
Civil Rights Division
- 1 - Mr. Leon Ulman, Chairman (Enclosure)
Department Review Committee
- 1 - Mr. Michael E. Shaheen, Jr. (Enclosure)
Counsel
Office of Professional Responsibility
- 1 - Mr. D. Jerry Rubino (Enclosure)
Security Officer
Department of Justice

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 02-28-2009 BY 65179 dmh/baw/sbs

1 - Mr. J. B. Adams
1 - Mr. J. J. McDermott
1 - Mr. W.O.Cregar
1 - Mr. J. A. Mintz
1 - Mr. D. W. Moore Jr.
1 - Mr. H. N. Bassett
1 - Mr. P. V. Daly
1 - b6
1 - b7C

February 14, 1979

SURREPTITIOUS ENTRY INVESTIGATION

Chronological Summary Regarding Notice Provided to Department of Justice Relating to the Safeguarding of Classified National Security Information

By memorandum captioned "Unauthorized Disclosure of Classified Information," dated January 12, 1979, Philip B. Heymann, Assistant Attorney General, Criminal Division, advised Mary C. Lawton, Deputy Assistant Attorney General, Office of Legal Counsel, prosecution under various criminal statutes in connection with unauthorized disclosures in this matter was inappropriate because (1) Bureau Headquarters did not follow the procedures set forth in the Executive Order and Department regulations which require that every document bear a classification marking; (2) the (Department) attorneys received insufficient notice and used the information in good faith; and (3) there is a complete lack of criminal intent. Additionally, this memorandum stated the disclosure of classified information to a grand jury and to the defendants' attorneys in the course of the investigation could not be shown to be "gross negligence" in violation of statute.

Set forth below is a summary of information setting forth the basis upon which unmarked documents were furnished to the Department, notice was afforded Department attorneys regarding classification and the need to protect the classified information and other sensitive information indicating insufficient attention was afforded Department regulations by Department attorneys which might be construed as negligence.

1. The Director of the FBI, by memorandum dated June 22, 1976, to the Assistant Attorney General, Civil Rights Division, with copies for the Assistant Attorney General for Administration; Assistant Attorney General, Criminal Division, and Assistant Attorney General, Office of Legal Counsel, brought to the attention of the Department a communication from FBI Headquarters to the FBI's New York Office requesting certain documents

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62-118045 -
① - 62-118045 (U.S. v. Gray, et al.)

DR:lfj (17)

ORIGINAL TO ASSISTANT ATTORNEY GENERAL,
CRIMINAL DIVISION, DOJ

ENCLOSURE Greenberg/Gray-6049

Surreptitious Entry Investigation

in this investigation which were not marked for classification be so marked and requesting the Civil Rights Division ensure copies in its custody were correctly marked. This memorandum also pointed out that the matter of obtaining clearance for attorneys representing Special Agents involved in the investigation had been referred by the FBI Security Officer to the Department Review Committee on June 17, 1976. The Department Review Committee had indicated that counsel retained by Special Agents who were subjects of the investigation could request and receive from the Attorney General access to information classified up to "Top Secret."

By memorandum to the Director, FBI, dated June 25, 1976, the Assistant Attorney General, Civil Rights Division, requested the FBI to take whatever steps necessary regarding clearances to enable an attorney representing FBI Agents to confer with them relating to classified information. The Assistant Attorney General made reference to the June 22, 1976, memorandum which had requested the Civil Rights Division and the FBI field offices to classify material which had been referred to the Civil Rights Division, commenting he failed to see why such a communication was sent as it could serve only to frustrate and impede Agents' efforts to cooperate. The Assistant Attorney General indicated he did not desire similar communications to be sent to any field office or through FBI Headquarters pertaining to the substance of this investigation without having been referred to him for review beforehand.

2. Memorandum from the Director, FBI, to the Attorney General, dated June 29, 1976, with copies to the Deputy Attorney General; the Assistant Attorney General of the Civil Rights Division; and the Director, Security and Administrative Services Staff (Security Officer), referred to the June 25, 1976, memorandum of the Assistant Attorney General, Civil Rights Division, and outlined in detail clearance procedures necessary for the Department to effect in connection with counsel retained by defendants in this matter. This memorandum also indicated the instructions relating to classification of documents furnished by FBI Headquarters to field offices were sent in support of the Code of Federal Regulations.

The June 29, 1976, memorandum also pointed out it was very possible Agents who were subjects of the Department's inquiry may have knowledge of Sensitive Compartmented Information.

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including operations in the foreign intelligence area where this Bureau has cooperated with the Central Intelligence Agency or the National Security Agency. It was indicated this may necessitate special clearances and coordination with other components of the Intelligence Community. It was also pointed out attorneys associated with defense counsel or administrative members of the staff of the latter may require clearances. Also, possible problems relating to the storage of and access to classified material, as well as defense counsels' preclusion from its further dissemination without Department authority, were indicated.

3. The Director, by memorandum dated June 30, 1976, to the Assistant Attorney General, Civil Rights Division, relayed the concern of Special Agents of our New York FBI Office regarding unauthorized disclosures to the media relating to this investigation, which could be a violation of Federal regulations and statutes, and requested advice as to whether an investigation should be undertaken. This memorandum of June 30, 1976, advised Civil Rights Division attorneys had reviewed a number of FBI files and documents in the New York Office and requested any notes taken concerning classified information in the documents during this review be appropriately classified.

By memorandum dated July 9, 1976, the Assistant Attorney General, Civil Rights Division, advised the Director of the FBI he felt any investigation into any disclosure to the media was not warranted and should not be undertaken.

4. In another memorandum dated July 9, 1976, the Assistant Attorney General, Civil Rights Division, advised Director Kelley of his specific request that no one in the Bureau communicate or discuss with any Agent who is the subject of this investigation any matter concerning the investigation unless a written communication to them has been approved beforehand by him. This memorandum was critical of conversations the FBI Security Officer had been having with a Special Agent involved in the investigation relating to the latter's need to secure clearance for his counsel. (The FBI Security Officer was acting based on instructions from members of the Department Review Committee and other officials of the Department.) Further, this memorandum specifically requested the Bureau's Security Officer "be removed immediately from any dealings or relations whatsoever with any manner or aspect of this investigation. His insulation from this

Surreptitious Entry Investigation

case should include not only any contacts with Agents under investigation, but any classification of documents or materials pertaining to matters under investigation."

5. By memorandum to the Assistant Attorney General, Civil Rights Division, dated July 26, 1976, the Director, FBI, expressed his concern regarding the protection of classified national security information and requested concurrence to brief the FBI personnel assigned to the task force assisting the Department. The Director's memorandum pointed out personnel assigned to the task force were selected by design because they had little or no experience in matters involving classified national security information and the briefing would be in compliance with Executive Order 11652. By memorandum to the Director, FBI, dated August 10, 1976, the Assistant Attorney General, Civil Rights Division, advised he was familiar with the provisions of the Executive Order and at the onset of the investigation he had taken necessary steps to ensure attorneys involved in the investigation were complying fully with all Departmental regulations governing the handling of classified information. The Assistant Attorney General stated he had personally reviewed task force leader Dick Long's operation, and was satisfied that the manner in which the task force is handling classified information is in accordance with proper procedures.

It should be noted Assistant Director Long was interviewed on June 22, 1978, and he advised he had questioned the policy of furnishing all available information, including classified material, directly to the Civil Rights Division. He stated he was instructed to do so by both former Director Kelley and the Assistant Attorney General of the Civil Rights Division, and that he had been advised the FBI was part of the Justice Department and, as such, whatever information was released to the Civil Rights Division would be remaining within the Department of Justice. Assistant Director Long stated he was advised by the Assistant Attorney General that appropriate steps had been taken to ensure that all Departmental attorneys working on the surreptitious entry investigation fully complied with the Department's regulations governing the handling of classified information. Long stated when he was designated in charge of the task force assigned to assist the Department of Justice, it was made clear to him that he and members of the task force would be under the direct supervision of the Civil Rights Division.

The above instructions, in effect, caused classifiable national security information originating within the FBI, as well as that originating within other agencies, to be furnished to the

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Department by the Long task force in unclassified form. It is noted the FBI, as a matter of policy, prior to the spring of 1974 did not mark for classification those documents of an internal character which were classifiable. The basis for this policy has been upheld by the Department Review Committee and the courts.

6. By memorandum to the Attorney General dated September 3, 1976, the Director, FBI, requested he be advised if the Federal grand jury impaneled in connection with this investigation had been cleared to receive classified information. By memorandum dated September 7, 1976, the Assistant Attorney General, Civil Rights Division, furnished to the FBI a copy of a memorandum from the Attorney General to him dated September 7, 1976, authorizing the dissemination of classified information or material to the Federal grand jury convened to hear evidence in this investigation. The authorization limited dissemination of such information to only the members of the grand jury, its court reporter, and the typist for any transcript of the jury proceedings, and was conditioned upon the Assistant Attorney General's making appropriate arrangements to ensure the proper protection of such information.

While it is unclear whether Attorney General Levi's authorization in this instance related to the grand jury convened in New York City or to the grand jury subsequently convened in Washington, D. C., in any instance the clearance was granted months after the jury had been convened and did not provide for the determination of trustworthiness which is required in the instance of individuals afforded access to national security information. No information has been developed indicating any formal investigation was conducted looking towards clearance of grand jury members, reporter or typist. The matter of clearance for the grand jury convened at Washington, D. C., was again raised by this Bureau's Security Officer in March, 1978. At that time the Department Security Office advised neither the court reporter, court stenographer, nor members of the Federal grand jury at Washington, D. C., had been afforded clearances for national security information. Subsequently the FBI Legal Counsel Division alerted the Department concerning the Security Officer's concern regarding this clearance requirement. By memorandum dated March 23, 1978, the Attorney General authorized the Assistant Attorney General, Criminal Division, to disseminate classified information to members of the grand jury, its court reporter, and the typist for any transcript. Again, it is not known that any determination was made of trustworthiness of these individuals, as is required by the Code of Federal Regulations.

Surreptitious Entry Investigation

7. A protective order filed by the Department of Justice on December 26, 1978, indicated, in an attachment, Sensitive Compartmented Information was discussed before the Federal grand jury in connection with the testimony of [REDACTED]

[REDACTED] on August 26, 1976, September 1, 1976, October 6, 1976, July 15, 1977, March 15, 1978, March 20, 1978, and March 22, 1978. This Federal grand jury was not cleared to receive Sensitive Compartmented Information, which requires special Intelligence Community controls under the supervision of the Director of Central Intelligence. The Attorney General is not authorized to permit the dissemination of compartmented material from other Intelligence Community agencies to the Federal grand jury. In one known instance, a document clearly classified and marked as Sensitive Compartmented Information was read to the Federal grand jury by a Department attorney.

By letters dated August 2, 1978, to the Director of the National Security Agency and the Director of the Central Intelligence Agency, Barnet D. Skolnik, Special Counsel, Department of Justice, advised it had been brought to his attention that Department attorneys had inadvertently disclosed classified National Security Agency and Central Intelligence Agency information before the grand jury. He indicated he had endeavored to find out how this breach of security regulations occurred, stating that early in the Civil Rights Division investigation the prosecutors had worked out an arrangement with the FBI whereby a group of specially-selected FBI Agents were to work with the prosecutors and supply them with FBI files. In order to ensure the integrity of the investigation, these Agents bypassed the normal chain of command in the Bureau and delivered files directly to the prosecutors. Mr. Skolnik continued by stating that none of the documents delivered to the prosecutors showed any classification by the FBI or any indication that portions thereof might contain information classified by Central Intelligence Agency or National Security Agency. He indicated apparently no one at the time thought about the fact that a few such documents might contain classified information originally obtained from National Security Agency or Central Intelligence Agency. (Prior notice set forth above plus the fact that a correctly marked document was read before the Federal grand jury would appear to indicate that Mr. Skolnik did not have possession of the complete facts when he alerted the National Security Agency and Central Intelligence Agency.)

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8. On March 31, 1978, [REDACTED] appeared under subpoena before the Federal grand jury convened at Washington, D. C. During his appearance, he was advised by Department attorney Francis J. Martin that this grand jury knew

9. By memorandum to Barnet D. Skolnik, Criminal Division, dated February 10, 1978, the Deputy Associate Director, FBI, advised the initial review by the FBI of records furnished by Assistant Director Long to the Civil Rights Division determined they contained a large amount of classifiable material, primarily at the "Confidential" and "Secret" levels, although numerous items classifiable "Top Secret" had been reviewed. This memorandum set forth the review did not result in the marking as classified all information potentially classifiable, as the Department had indicated such would constitute a hindrance to the prosecution operations. The memorandum stated that although normal procedure as relates to classification was impractical, the only solution was for the Department to regard the entire package of material furnished by Mr. Long as classified under Executive Order 11652. It was indicated the ultimate solution to the problem could be postponed but would involve either the posting of classification warnings, destruction of the material (where only copies were involved), or the returning of the material to the FBI's control for appropriate disposition.

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10. On April 21, 1978, Department attorney Francis J. Martin, Criminal Division, contacted Special Agent Paul V. Daly of the FBI and requested no classification be placed on documents needed to comply with discovery in connection with the arraignment of defendants on April 20, 1978, in the matter of L. Patrick Gray, III, et al. Mr. Martin was advised classifications would have to be done on these materials and they would also have to be reviewed for excisions necessary to protect sources. Mr. Martin indicated he had discussed this matter with Mr. Skolnik and both were in agreement that the Bureau should not classify these materials.

11. By memorandum dated April 24, 1978, the Deputy Associate Director of the FBI advised Benjamin R. Civiletti, Acting Deputy Attorney General, as relates to documents falling within the purview of discovery in the matter of United States v. L. Patrick Gray, III, et al., that by agreement the FBI would not excise classified material from these documents. However, the memorandum indicated unredacted copies containing classified information should not be furnished to the defense without further consultation with the FBI.

12. During late April, 1978, representatives of this Bureau in contact with the prosecuting team of the Criminal Division of the Department of Justice determined that on April 25, 1978, copies of FBI-classifiable material were furnished by Criminal Division attorneys to defense counsel. No effort had been made by Department attorneys to afford the FBI a chance to review these documents for classification purposes, nor was any effort made to mark the documents as classified. On April 27, 1978, the FBI Security Officer notified the Department of Justice Security Officer of this violation of classification regulations. The Department Security Officer advised copies of some of these documents had been made and distributed to various personnel in the Department for review. Personnel in Mr. Skolnik's office who originally held the copies and the individuals to whom the copies were distributed in the Department did not have the required compartmented clearances. Additionally, the Department Security Officer determined six additional copies of one of the sensitive documents had been made and had been given to the defense attorneys who also did not have compartmented clearance. It should be noted one of the documents furnished to defense counsel on April 25, 1978, was classifiable "Top Secret - Code Word" and contained information originated within another Intelligence

Surreptitious Entry Investigation

Community organization. A second document, copies of which were also furnished to defense counsel, made reference to the cryptonym and information which might compromise an asset of the Central Intelligence Agency and thus its dissemination should have been afforded prior clearance by that agency. Subsequently, Special Agents Joseph L. Tierney, Sammy J. Miller and Paul V. Daly met with Department attorneys Breckinridge L. Willcox and Paul R. Boucher to express their concern regarding the providing of these sensitive documents to defense counsel. Mr. Boucher advised he was aware of the agreement that no materials would go to the defense without prior review by the FBI and he thought this agreement had been honored. He said he was not aware that documents had been furnished to the defense on April 25, 1978, which had not been subjected to review by the FBI for the purpose of making classification determinations and excisions of material exempt from discovery. Mr. Willcox stated he was not aware of the agreement which he assumed had been made prior to the Criminal Division's assuming the responsibilities for the investigation from the Civil Rights Division in December, 1977.

13. By memorandum dated May 5, 1978, to the Director, Administrative Programs Management Staff, Office of Management and Finance (Department Security Officer), the FBI Security Officer advised that beginning in 1976 a large volume of records of the FBI was furnished by Assistant Director Long to the Civil Rights Division of the Department. The memorandum advised a partial review of the material had determined much of it is classifiable, but contained no classification markings. The FBI Security Officer indicated he would appreciate it if the Security Officer of the Department was able to make inquiries in connection with the safeguarding of the material.

14. Memorandum from the Director, FBI, to the Attorney General dated May 9, 1978, with copies furnished to the Chairman of the Department Review Committee, the Director of the Administrative Programs Management Staff, and to the Assistant Attorney General of the Criminal Division, set forth it had been determined that 81 volumes of documents from the files of the FBI were provided by the task force headed by Assistant Director Long to the Civil Rights Division and more recently to the Criminal Division. It was indicated many of these documents were of a sensitive nature and related to intelligence sources and methods and ongoing

Surreptitious Entry Investigation

operations. Further, it was indicated these documents were prepared for internal FBI use and, thus, in accordance with procedure, many were not marked to indicate their levels and characters of classification. The memorandum pointed out the concern of the FBI regarding these documents as many of the Department attorneys responsible for their custody and who would be working with them are inexperienced as relates to the clearances, accountability, transmission, and storage of classified national security information and material. The memorandum requested, because of the overall sensitivity of the material in the 81 volumes, that all documents not essential to the current prosecution and discovery responsibilities of the Department be promptly returned to the FBI so appropriate classification action, accountability, and storage may be ensured.

15. By memorandum dated May 19, 1978, the Deputy Associate Director, FBI, advised the Deputy Assistant Attorney General, Criminal Division, that there was an undetermined number of copies in the custody of the Department of a Sensitive Compartmented Information FBI document (dated May 31, 1972) which had been made available to Mr. Skolnik's office and, thereafter, reproduced. The memorandum indicated there was also in Department custody an undetermined number of similar FBI documents which have not been reviewed by the FBI, but which contain similar material of presumably identical classification levels requiring restricted access. The Deputy Attorney General was referred to the Deputy Associate Director's memorandum to Mr. Skolnik dated February 6, 1978.

16. By memorandum dated October 5, 1978, to the Deputy Assistant Attorney General, Office of Legal Counsel, the Director advised grand jury transcripts containing compartmented information had been furnished in unmarked form to defense counsel in the matter of United States v. L. Patrick Gray, III, et al. (The problem of unmarked classified information appearing in grand jury testimony was discussed during a June 1, 1978, meeting with Mr. Skolnik, his staff, Ms. Lawton and Deputy Assistant Attorney General Robert Keuch of the Criminal Division. Participating in this meeting were Mr. John J. McDermott, Deputy Associate Director, FBI, and Assistant Director Harold H. Bassett, FBI. Mr. Skolnik agreed to notify defense attorneys of the problem of classified materials in the transcripts and to seek a

Surreptitious Entry Investigation

court order allowing review of the transcripts by FBI, Central Intelligence Agency and National Security Agency for the purpose of identifying highly sensitive information and alerting holders of the transcripts to their sensitivity. The FBI did not receive copies of the transcripts for review until September 20, 1978.) The Director requested a review be conducted to determine whether there was a violation of Federal statutes. He also advised that since there appeared to be an improper release of classified material, the provisions of the Code of Federal Regulations must be complied with, as well as notification to originators. The Director suggested that both Central Intelligence Agency and National Security Agency be advised that the grand jury transcripts containing the sensitive material were furnished to and continued to be in the possession of defense counsel, and that the latter, according to our understanding, did not have the necessary clearance. (This memorandum was personally delivered to and discussed with the Deputy Assistant Attorney General, Office of Legal Counsel, and the Deputy Attorney General, by the Director on October 5, 1978.)

By memorandum dated October 6, 1978, the Deputy Assistant Attorney General, Office of Legal Counsel, advised the Director, FBI, that on the basis of his notification of October 5, 1978, concerning possible compromise of national security information, she was alerting the Security Officers of the Criminal and Civil Rights Divisions of their responsibilities to undertake a damage assessment as required by the Code of Federal Regulations and to make inquiry to determine whether corrective measures and appropriate administrative, disciplinary or legal action should be taken. The Deputy Assistant Attorney General furnished copies of this notification to the Department Security Officer and the Department Review Committee.

The Deputy Assistant Attorney General advised she did not believe it appropriate for the Department to notify the Intelligence Oversight Board under Executive Order 12036 regarding this compromise as the Department was not, itself, an agency of the Intelligence Community. It was indicated the Department would keep the Director advised of action taken in response to his notice of the unauthorized disclosure.

17. By memorandum dated October 20, 1978, the FBI Security Officer advised the Chairman of the Department Review Committee, with copies to the Deputy Assistant Attorney General, Office of Legal Counsel, to the Assistant Attorney General,

Surreptitious Entry Investigation

Criminal Division, and to the Acting Director, Administrative Programs Management Staff, of concerns for the safeguarding of national security material which had previously been expressed in the Director's memorandum to the Attorney General dated May 9, 1978. The Security Officer set forth a summary of the background relating to the above unauthorized disclosures, including information regarding the notice that had been given to the Department relating to the classifiability of FBI documents provided to the Department in connection with the surreptitious entry investigation. The Security Officer respectfully requested this matter be reviewed for action necessary to ensure compliance with pertinent Executive Branch regulations and that the Department ascertain responsibility for the unauthorized disclosure. It was further requested the Department retrieve all documents relating to the surreptitious entry investigation which have not been reviewed by the FBI in order that these documents may be reviewed for appropriate classification action.

18. By memorandum to the Director dated January 12, 1979, the Assistant Attorney General, Criminal Division, provided a copy of a memorandum of the same date to the Deputy Assistant Attorney General, Office of Legal Counsel. The former memorandum requested the FBI conduct the necessary damage assessment of the unauthorized disclosure of classified information originated within the Bureau and that the FBI request National Security Agency and Central Intelligence Agency to do the same with regard to their originated information. The enclosed latter memorandum informed the Deputy Assistant Attorney General, Office of Legal Counsel, that the Criminal Division had concluded that information provided to that division does not indicate a violation of Federal statutes.

19. By memorandum dated January 23, 1979, the Deputy Assistant Attorney General, Office of Legal Counsel, with a copy to the Director, FBI, stated that while she concurred in the conclusion of the Criminal Division that prosecution was not warranted, she desired to correct some misunderstandings contained in the Criminal Division's memorandum. She advised that the disclosure, which primarily raised the question of an espionage law violation, involved a document which indicated on its face that it contained communications intelligence information and which was read, in part, to the grand jury. She further advised attorneys for the Government should have been on notice that the

Surreptitious Entry Investigation

Documents involved contained classified information based on a memorandum dated October 20, 1978, from the FBI Security Officer. Further, she advised on February 10, 1978, the FBI had notified the new prosecution team that documents in their possession did, in fact, contain classified information. Thus, the Deputy Assistant Attorney General, Office of Legal Counsel, questioned the conclusion the attorneys had insufficient notice of the classification of the material in their possession.

APPROVED: *WJS*

Director _____

Assoc. Dir. _____

Dep. AD Adm. _____

Dep. AD Inv. _____

Adm. Serv. _____

Crim. Inv. _____

Ident. _____

Intell. _____

Laboratory _____

Legal Coun. *JM*

Plan. & Insp. *HW*

Rec. Mgnt. _____

Tech. Servs. _____

Training _____

Public Affs. Off. _____

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

TO : Mr. O'Brien *fb*

DATE: 4/13/79

FROM : *CL* U. L. Tierney

SUBJECT: UNITED STATES vs. W. MARK FELT, et al.
DISCOVERY PROCEEDINGS

CJ PURPOSE: To record second motion to dismiss indictment and government motion in opposition, and to comment on portions of both.

DETAILS: We have received from the Department complete sets of the Gettings (Felt) motion to dismiss and the government opposition to dismissal which is in form of motion to modify the discovery order. We have previously been furnished the preliminary letter from Gettings on the same topic, and a package of a letter and a motion to dismiss by Kennelly (Miller).

The documents which Gettings states we could not locate are a sampling from a list of 989 items Gettings requested following the review by the retired FBI Agents ("investigators"). His letters describe what he wants based on the notes of the investigators and the descriptions were inadequate or inaccurate. His office was asked to give us access to the original notes of the investigators since we can better interpret their document descriptions, but they did not do so. Kennelly encountered the same problem, but gave us the notes.

Of the 989 items requested by Gettings, he did not receive 107. (65 could not be located based on his description, 31 were foreign source material, eight had been listed erroneously on an inventory and were outside the scope of discovery, one was outside the time frame ordered by the court, one was withheld for source protection and one was NSA information.)

REC-112

62-118045-166
MAY 16 1979

- 1 - Mr. Adams
- 1 - Mr. McDermott, Encl. (2) b6
- 1 - Encl. (2) b7C
- 1 - Mr. O'Brien
- 1 - Mr. Daly

(CONTINUED-OVER)

JLT:mmb
(8) mmb



58 MAY 16 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan
Greenberg/Gray-6062

FBI/DOJ

Memorandum from Mr. Tierney to Mr. O'Brien
Re: W. MARK FELT

The government motion contends "substantial compliance" and restates its position that the documents are not material to any issue. The argued immateriality in the motion is made clearer in the Memorandum of Law which asks the court to reconsider the applicability of the Barker-Martinez defense.

We are exploring two statements in the government memorandum:

1. No more than tacit approval in the past (p 12.). The Brownell memorandum, effective from 1954 until recinded by Katzenbach, is the clearest contradiction.
2. No past practice of warrantless searches in fugitive cases (pp 16-17). There were four techs authorized by Kennedy to apprehend

[redacted]
and we believe we may be able to document bag jobs and/or mikes used on the "CP Underground" which was a fugitive investigation.

b6
b7C

We advised Frank Martin of both of the above on 4/12/79, and will confirm in writing if appropriate.

RECOMMENDATION: None. For information.

yes
Letter 5/8/79
Paul V. Daly to
Francis J. Martin
same caption

APPROVED: *Wm*

Director

Assoc. Dir.

Dep. AD Adm.

Dep. AD Inv.

Adm. Serv.

Crim. Inv.

Ident.

Intell.

Laboratory

Legal Coun.

Plan. & Insp.

Rec. Mgnt.

Tech. Servs.

Training

Public Affs. Off.

~~CONFIDENTIAL~~

4/25/79

~~CONFIDENTIAL MATERIAL ATTACHED~~

Paul V. Daly
Federal Bureau of Investigation
U. S. vs. W. MARK FELT, et al.
DISCOVERY PROCEEDINGS

EXEMPTED FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(1)
DATE 03-02-2009

~~FEDERAL GOVERNMENT~~

Francis J. Martin
Department of Justice

Per your request, we have attempted to locate the five documents described as originating with the Department and listed on page 20 of the MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT FOR FAILURE TO COMPLY WITH COURT ORDERED DISCOVERY filed on behalf of Mr. Felt.

1. Letter from Assistant Attorney General (AAG), Criminal Division (CD) to the Acting Director, 6/1/73 is attached. This document, and the documents sought in #3 and #4, below, were related to a disclosure package prepared by us in which selected documents, rather than entire files, were processed.

2. The referenced letter in document 106 is erroneously assumed to have been a letter from the Department. The identity of the agency which originated the reference was redacted before document 106 was turned over to the defense.

3. [REDACTED]

4. Letter from AAG, ISD, 1/18/72, is attached.

5. Letter from AAG, CD, 5/3/73 was included in our package #66 (your number 228 (N) 6). A copy of the document as it was disclosed to the defense is attached.

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - [REDACTED] b6
- 1 - Mr. Bailey b7C
- 1 - Mr. Daly
- 1 - Mr. Tierney

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

JLT:bas (9)

ENCLOSURE
ENCLOSURE ATTACHED

~~CONFIDENTIAL MATERIAL ATTACHED~~

~~CONFIDENTIAL~~

Greenberg/Gray-6064

Frank Martin was advised 5/10/79 that this document was included in the material reviewed 8/11/78 by defense (#1)

REC-112

Hand delivered
4/26/79

62-118045-167

FBI
MAY 16 1979

RECEIVED

(SEE NOTE PAGE TWO)

61979

MAIL ROOM

~~CONFIDENTIAL~~

Memorandum from Mr. Daly to Mr. Martin
Re: U. S. vs. W. Mark Felt, et al.
Discovery Proceedings

Mr. Gettings requested 989 listed items after materials were reviewed by the retired Agents. His descriptions of documents were based on the retired Agents' handwritten notes and were inadequate or inaccurate. We were in regular telephonic contact with his office in our efforts to secure better information to locate the requested documents. His office was asked to give us access to the original notes of the retired Agents, since we can better interpret their document descriptions, but they did not do so. Mr. Kennelly encountered the same problem, but gave us the notes.

Of the 989 items requested, Mr. Gettings did not receive 107 (65 could not be located based on his descriptions, 31 were foreign source material, eight had been listed erroneously on an inventory and were outside the scope of discovery, two were dated 1965 and 1975 and were outside the time frame ordered by the court, and one was withheld for source protection).

In reviewing again those documents withheld as foreign source material, we have located one out of the 31 requested documents which was inadvertently withheld in its entirety. The majority of the document is releasable and a copy is attached. It is a teletype from SAC, Los Angeles to FBI Headquarters, 6/8/72, and was #651 on Mr. Gettings' list. The document was processed on 2/8/78 during the first week of work on discovery in U.S. vs. John J. Kearney. We are confident this was an isolated instance. The remaining 30 out of the 31 requested documents must be withheld in their entirety.

Enclosures (5)

NOTE: Mr. Martin requested 4/19/79 that we attempt to locate the five documents sought by the defense. He wanted to verify the decision not to conduct further searching and to get a feel for the material to which the defense has not had access.

We cannot, nor have we been requested to recheck our efforts to locate all documents sought. The original effort involved literally weeks of concentrated effort. The one document now identified which should have been furnished to the retired Agents is being forwarded for disclosure by the Department.

Greenberg/Gray-6065

APPROVED: _____
Director _____
Assoc. Dir. _____
Asst. AD Adm. _____
Asst. AD Inv. _____
Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____

~~CONFIDENTIAL~~

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DATE 03-28-2009 BY 65179 dmh/baw/sbs
(Envelope only)

Greenberg/Gray-6066

62-118045-167

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

NR 029 LA CODE

9:10 PM URGENT 6-8-72.PEN

TO ACTING DIRECTOR

ATTN: DOMESTIC INTELLIGENCE DIVISION

CHICAGO

CLEVELAND

SEATTLE

FROM LOS ANGELES (176-1898) 3P

JUNE

APPROPRIATE AGENCIES
AND FIELD OFFICES
ADVISED BY ROUTING
SLIP(S) OF *Classification*
DATE *11/7/77 P.S.*

WEATHFUG, OO: CHICAGO, LOS ANGELES FILE ONE SEVEN SIX

DASH ONE EIGHT NINE B; [REDACTED] ALSO KNOWN AS

DASH SM DASH REVOLUTIONARY ACTIVITIES (EXTREMIST), OO:

LOS ANGELES, LOS ANGELES FILE ONE ZERO ZERO DASH SEVEN EIGHT

NINE ONE FIVE.

Classified by *2209*
Exempt from GDS, Category *2*
Date of Declassification Indefinite *10/31/77*b6
b7CRE BUREAU AIRTEL DASH MAY TWENTY THREE LAST AND SEATTLE
TELETYPE DATED JUNE SEVEN LAST ENTITLED, "WEATHFUG; [REDACTED]b6
b7C

[REDACTED] ALSO KNOWN AS DASH FUGITIVE; [REDACTED]

[REDACTED] ALSO KNOWN AS DASH FUGITIVE, ETC".

REFERENCED TELETYPE INDICATED [REDACTED]

[REDACTED] IN CONTACT [REDACTED]

[REDACTED] JUNE SIX LAST. [REDACTED] INDICATED WEATHERMAN 17 JUN 14 1972

ORGANIZATION PLANNING CONFERENCE IN U.S. SOON AND INDICATED [REDACTED]

[REDACTED] SHOULD CONTINUE STUDIES TO QUALIFY FOR WEATHERMAN
ORGANIZATION THROUGH SUBJECT. [REDACTED] ALSO STATED HE HAS

END PAGE ONE

6 JUN 30 1972 21 1972

Confidential

Mr. Felt	_____
Mr. Mohr	_____
Mr. Rosen	_____
Mr. Bates	_____
Mr. Bishop	_____
Mr. Callahan	_____
Mr. Campbell	_____
Mr. Casper	_____
Mr. Cleveland	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Marshall	_____
Mr. Miller, E.S.	_____
Mr. Ponder	_____
Mr. Soyars	_____
Mr. Walters	_____
Tele. Room	_____
Mr. Kinley	_____
Mr. Armstrong	_____
Ms. Herwig	_____
Mrs. Neenan	_____

UNRECORDED COPY FILED IN 116

2663

PAGE TWO

LA 176-189 B

(U) BEEN IN TELEPHONIC CONTACT WITH SUBJECT RECENTLY AND INDICATED HE WOULD CONTINUE CONTACTS WITH [REDACTED] IN FUTURE AND WOULD FOLLOW SOURCE'S DEVELOPMENT [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

b6
b7C

REFER

AS PREVIOUSLY POINTED OUT, SUBJECT RESIDES IN AREA ALMOST COMPLETELY INACCESSIBLE TO FISURS DUE TO FACT RESIDENCE ON DEAD END STREET, COMPLETELY SURROUNDED BY SYMPATHETIC COMMUNES, SOME MEMBERS OF WHICH KNOWN TO BE IN FREQUENT CONTACT WITH SUBJECT. PAST ATTEMPTS AT FISURS IN THIS AREA FROM STRATEGIC LOCATIONS SOME DISTANCE FROM RESIDNECE TOTALLY INEFFECTIVE, DUE TO VOLUMINOUS ACTIVITY OF THIS AREA.

ATTEMPTS TO LOCATE PLANT UNSUCCESSFUL EVEN THOUGH REALTOR SOURCE MAKING CONSTANT DISCREET INQUIRIES THIS AREA. EFFORTS CONTINUING REGARDING PLANT.

CONFIDENTIAL [REDACTED] SOURCE HAS FURNISHED VERY LITTLE INFORMATION OF VALUE TO DATE REGARDING SUBJECT'S DAILY ACTIVITIES.

END PAGE TWO

~~CONFIDENTIAL~~

ABOVE LOS ANGELES SOURCES HAVE FURNISHED ALMOST ALL AVAILABLE INFORMATION REGARDING SUBJECT TO DATE, HOWEVER, LITTLE OF THIS INFORMATION RELATES TO SUBJECT'S DAILY ACTIVITIES. THESE SOURCES NOT PRESENTLY AVAILABLE FOR COVERAGE OF SUBJECT.

b6
b7C

С. И. Д. О. С.

END .

EJF FBI WASH DC

CC-ME. W/1.175

UNITED STATES GOVERNMENT

Memorandum

TO : Joseph Tierney ^{JLT}
Federal Bureau of Investigation

DATE: April 23, 1979
FJM:ams

FROM : Francis J. Martin ^{FJM}
Criminal Division

~~FEDERAL GOVERNMENT~~

SUBJECT: United States v. Felt

W. MARK

— Please process the attached request from Frank Dunham.

@

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DATE 02-28-2009 BY 65179 dmh/baw/sbs

REC-112

62-118045-168

22 MAY 16 1979

2- ENCLOSURE
ENCLOSURE ATTACHED



58 MAY 16 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Greenberg/Gray 6077

not in FOIA
b6
b7c

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DATE 02-28-2008 BY 65179 dmh/kaw/snc

Greenberg/Gray 6078



62-118048

168

ENCLOSURE

DAILY LOG
DIRECTOR'S OFFICE
FEDERAL BUREAU OF INVESTIGATION

FILE 10W3
DATE MAY 10, 1965

Time	Caller	VIA	Action	Initials
9 ³⁹	SA [REDACTED]	PERS	SAW DIRECTOR	ONE
	BUREAU PHOTOGRAPHER			
9 ⁴⁹	[REDACTED]	PERS	SAW DIRECTOR	ONE
	his PARENTS			
	[REDACTED]			
	BUREAU PHOTOGRAPHER			
9 ⁵⁴	SA [REDACTED]	PERS	SAW DIRECTOR	ONE
	[REDACTED]			
	INSP. PETER BAZOWSKI			
	BUREAU PHOTOGRAPHER			
10 ³⁸	MR. DELOACH	TELE	SPOKE to DIRECTOR	ONE
10 ⁴⁰	Asst. LEGAT. [REDACTED]	PERS	SAW DIRECTOR	ONE
10 ⁴²	[REDACTED]	TELE	SPOKE to DIRECTOR	ONE
3 ²⁵	(HOLLYWOOD, CALIFORNIA)	TELE	DIRECTOR OUT- RPD to INSP. WICK	ONE
4 ¹²	SAC J.F. SANTOIANA, JR.	PERS	SAW DIRECTOR	ONE
4 ³³	(SCARSDALE, NEW YORK)	TELE	DIRECTOR OUT- TRD to SA [REDACTED]	ONE
5 ⁰⁸	ASAC J.F. MORLEY	PERS	SAW DIRECTOR	ONE
2 ⁰⁵	[REDACTED]	TELE	LEFT MESSAGE	ONE
(CONTINUED ON NEXT PAGE)				

b6
b7C

DIRECTOR:	IN - 8 ⁵⁵	IN - 1 ²⁸	IN -	IN -	IN -
	OUT - 12 ²⁵	OUT - 6 ⁰²	OUT -	OUT -	OUT -

DIRECTOR:	IN -	IN -	IN -	IN -	IN -
	OUT -	OUT -	OUT -	OUT -	OUT -

[illegible]

OUT -

LAW OFFICES
LEONARD, COHEN, GETTINGS AND SHER
SUITE 550
1700 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, D. C. 20006
(202) 872-1095

JERRIS LEONARD
HARVEY B. COHEN
BRIAN P. GETTINGS
DAVID E. SHER
WILLIAM L. STAUFFER, JR.
JOANNE F. ALPER
JAMES T. DEVINE
FRANK W. DUNHAM, JR.
MARK D. CUMMINGS*
*MEMBER VIRGINIA BAR ONLY

VIRGINIA OFFICES
1400 NORTH UHLE STREET
COURTHOUSE SQUARE
ARLINGTON, VIRGINIA 22216
(703) 525-2260

April 16, 1979

Francis J. Martin, Esq.
Criminal Division
Department of Justice
Washington, D.C. 20530

Dear Frank:

Enclosed please find a xerox copy of a set of notes we found while going through the discovery material you have furnished us. We would appreciate it if you could tell us the discovery number assigned to these notes as well as the author of the notes.

Thank you for your assistance.

Sincerely,

LEONARD, COHEN, GETTINGS & SHER



Frank W. Dunham, Jr.

FWD:kw
Enclosure

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HEREIN IS UNCLASSIFIED
DATE 02-28-2009 BY 65179 dmh/baw/sbs

Name	Ext.	Room	Day	Time
Director +	444	5633	5/10	5:10
Tolson ++	666	5744	5/11	11:15
Sullivan	353	5736	5/11	3:30
Mohr	333	5525	5/11	4:30
Callahan	315	5515	5/11	4:30
Casper +++	494	5234	5/13	9:15
Conrad	777	7621	5/10	3:00
DeLoach	691	5640	5/11	10:00
Evans	2061	1742		
Gale	484	5256	5/11	2:30
Rosen	571	5706		
Sullivan ++	2121	807 RB	5/11	11:15
Tavel	2331	7746	5/10	3:30
Trotter +	2233	4130 IB	5/11	11:00

WELT

ask about David Rosen.

++ = Joe Luns - Green, Turner.

+ = 4th anniversary.

++ = Luns ok?

+++ = consider I & period to replace
admission slip or tunnel?

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 02-28-2009 BY 65179 dmh/baw/sbs

Greenberg/Gray-6083

5/10
Shredded.
10²⁰

57-70 = 15% of Ben and others.

Baumgardner
10³⁰

Discussion is current & precise.

Beard
11¹⁰

Primary Source.

N.P.P.R.

F.A.G. - C. J. J. J.

Rosine Intelligence.

Rosine Meters.

Brennan
11⁴⁵

Depose Person
Done see Linton
J. J. J. J.

F.P.C. meters.

Brangan
11-15

1. Print - conduct as out
general.

Lizoo
11-45

16. clean all pieces & tools.
use for internal repair or
burned life in garage

No fuel or oil seals.

Guarantee
500

89-10 year

Get prevention by user!

5/14
9:00
2pp.

on 1/2 annual mt.
1) make P1 over 1 yr
continuation of the mt.
& not separate write-up
on each.

show when accepted to
annual 2-yr or just
of keeping as P1.

2) on air write-up
#6 of annual summary.
Just show every 5
years - don't show
all of the info. he
gave. This is 1/2 annual mt.

Monitor letter.

- 1) make sure figures
are accurate
- 2) only list stats.

All in ADP now.

Lets are not filed
out to base base.

Eddy
9/15

Goodwin
10/20

John & V. Oswald
when others pay up
Disputed on Ben info

Harsh

NFAP

Aug 00
11/15

Quinn
2/20

Spencer = clerk



= known some

where = searched

b6
b7C

171 ✓
Belmont
330

Special Incident Techniques.

1. Only gopt = only special cases.
more restricted - than opps.
2. Mail cover = O.O. restricting them.
3. Truck covers = opp. road only - 1 on - phone
4. Bag jobs =, this OK.
5. Microphone = this OK need A.G. approval. Must be secure. If on-site found (L.A. boys) may be opps
6. Loudspeakers = same as before when all continue times this A.G.

Must give A.G. 6 no discontinuance letter when no effect.
re #5 + #6

Informants are better than those.

Don't be dependent

Heimans asked my views
of the 12 stat lines
& I said him.

May be continued in
July.

4/27/79

Paul V. Daly
Federal Bureau of Investigation
U.S. vs. W. MARK FELT, et al.
DISCOVERY PROCEEDINGS

Francis J. Martin
Department of Justice

FEDERAL GOVERNMENT

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 02-28-2009 BY 65179 dmh/baw/sbs

Reference is made to your letter of 4/23/79 forwarding a letter to you from Frank W. Dunham, Jr. and its enclosures.

We do not recognize the material sent to you by Mr. Dunham as material processed by this office during discovery. From its format and content, the material appears to be a schedule of appointments and notes kept by an FBI official who was visiting the Director and his staff over a four day period. From the Assistant Directors listed, the year was probably 1965.

The visitor is shown as having an appointment with the Director at 5:10 p.m. on May 10th.

The daily log for the Director's office on May 10, 1965 shows ASAC J. F. Morley visited the Director at 5:08 p.m.

Mr. Dunham's letter and its enclosures are returned herewith.

If Mr. Dunham's enclosures are to be viewed as government documents, there are two sensitive items mentioned in them. The notes after the entry "Sullivan 2:00" appear to mention the name (which we cannot read) of a person who may have been an FBI informant or source. The author of the notes would be able to identify the name. The identity of the person mentioned should be protected accordingly by the defense. In addition, the notes after "Branigan 11:15" are sensitive only because of the mention of a specific foreign country.

Although we have concluded it is inappropriate to classify or to redact information in Mr. Dunham's enclosures, please relay our concerns to him.

Enclosure

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - [redacted]
- 1 - Mr. Bailey
- 1 - Mr. Ryan
- 1 - Mr. Daly
- 1 - Mr. Tierney

APPROVED:

Director _____
Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____

Adm. Serv. _____
Crim. Inv. _____

Ident. _____
Intell. _____
Laboratory _____

Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____

Hand delivered
5/1/79
Greenberg/Gray-6090

(SEE NOTE PAGE TWO)

Greenberg/Gray-6090

58 MAY 1979
JLF:bas (10)

Memorandum to Mr. Martin from Mr. Daly
Re: U. S. vs. W. Mark Felt, et al.
Discovery Proceedings

NOTE: Martin forwarded the original of Dunham's letter and its enclosures to us and we are returning both to him.

The contents of the notes shed no new light on the prosecution. The notes on "Special Invest Techniques" recite the situation in 1965 as we understand it.

John F. Morley was ASAC Denver from December, 1963 to July, 1973, was later an SAC in New York, and is now retired. Because of his assignment to New York, he is a logical interviewee of defense counsel. It is therefore likely that Dunham obtained this material from Morley and not from the Bureau or the Department.

Indices reviewed for [redacted] and variations [redacted]
[redacted] and no [redacted] references were located. b6
b7C
b2

ST

5/8/79

Paul V. Daly
Federal Bureau of Investigation

FEDERAL GOVERNMENT

U.S. vs. W. MARK FELT, et al.
DISCOVERY PROCEEDINGS

Francis J. Martin
Department of Justice

Per your request of April 12, 1979 the following comments are submitted. They pertain to factual assertions in the MEMORANDUM OF LAW IN SUPPORT OF THE GOVERNMENT'S MOTION TO MODIFY THIS COURT'S DISCOVERY ORDER. Both assertions are in that portion of the memorandum dealing with

The first assertion is to the effect that

OTHER Filed under seal

In the following paragraph

The second assertion is to the effect that

REC-112 62-118643

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Dep. AD Inv. _____
Asst. Dir.: _____
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Attached is an inventory of documents we believe will illustrate the questionable validity of the above two assertions. Copies of each document mentioned are either also attached, or are already in your possession (in which

1 - Mr. Adams 1 - Mr. O'Brien
1 - Mr. McDermott 1 - Mr. Daly
1 - [redacted] 1 - Mr. Tierney

Revised by Director
Hand delivered 5/8/79

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SEE NOTE PAGE TWO

CONFIDENTIAL MATERIAL ATTACHED
(stamped on original)

58 MAY 16 1979

Memorandum from Mr. Daly to Mr. Martin
Re: U. S. vs. W. Mark Felt, et al.
Discovery Proceedings

case a reference to our disclosure package number is given). Included in the inventory is a brief parenthetical comment on the significance of each document.

We have conducted little or no additional research. We have included only those documents known to us as apparently contradictory of the two assertions when we received a copy of your MEMORANDUM OF LAW, mentioned above. We advised you in general terms of the nature of the contradictory documents at that time.

Although records of past warrantless searches are uniquely incomplete, we know of no reason not to assume that further research would uncover similar, additional documentation.

Not all of the contradictory documents furnished during discovery are listed and we refer you to our discovery packages on the issues of notice to the Department and to the White House for additional details.

Please note the documents enclosed herewith are solely for your office's use, and have not been redacted for discovery purposes. Note also that documents which originated with the Department have not been reviewed by us for possible classification since only the Department has authority to do so.

Enclosures 53

NOTE: Memorandum 4/13/79 J. L. Tierney to Mr. O'Brien under the above caption outlined the two questionable assertions. It noted we had advised Mr. Martin of this and would confirm in writing if appropriate, to which the Director appended "yes." Mr. Martin had asked for the contradictory documentation on 4/12/79. The material is, therefore, being furnished by instant memorandum.

Documents 1 to 20 were taken from the Exhibits to the memorandum dated 7/12/66 from R. W. Smith to Mr. W. C. Sullivan captioned MICROPHONES; POLICY BRIEF.

Documents 21 to 33 were taken from "SAC FOLDER (A)" which is part of those materials seized in 1976 from the office of ADIC, New York in the early stages of the Department's investigation.

Memorandum from Mr. Daly to Mr. Martin
Re: U. S. vs. W. Mark Felt, et al.
Discovery Proceedings

Documents 34 to 42 were taken from the June file of 100-36670, serials 62-64, 67-71, and 73.

Documents 43 to 46 were taken from the June file of 88-19435, serial 100 (original, not yellow), 304, 325 and 330.

Documents listed as 47 to 52 are selected samples from materials already furnished to the Department for the defense during discovery.

Except possibly [redacted] materials, all of this documentation has been reviewed by the Department before, including 88-19435 which was specifically exhibited to Mr. Martin while he was drafting this memorandum of law.

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APPROVED:	Adm. Serv. _____	Legal Coun. _____
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Dep. AD Inv. _____	Laboratory _____	Training _____
		Public Affs. Off. _____

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INVENTORY OF DOCUMENTS

1. Memorandum from A. H. Belmont to D. M. Ladd, 10/3/51, captioned, "CP, USA - BRIEF; PROSECUTION OF ADDITIONAL COMMUNIST FUNCTIONARIES UNDER THE SMITH ACT, INTERNAL SECURITY - C, SMITH ACT OF 1940" (concern expressed over warrantless searches, action to be taken, policy development, and values considered). (U)
2. Letter from the Director to the Attorney General (AG), 10/6/51, captioned, "TECHNICAL COVERAGE" and the AG's response 2/26/52, captioned, "Wiretapping Surveillances" (Departmental guidance and FBI reaction). (U)
3. Memorandum from L. V. Boardman to the Director, 4/1/54, captioned, "MICROPHONE SURVEILLANCES" (concerning a conference with Deputy Attorney General (DAG) William P. Rogers and a proposed memorandum from the AG to the Director). (U)
4. Memorandum from L. B. Nichols to Mr. Tolson captioned, "TECHNICAL SURVEILLANCE" (rationale of the DAG on the contemplated memorandum and the reactions of Messrs. Tolson and Hoover). (U)
5. Letter from the AG to the Director, 5/20/54, captioned, "MICROPHONE SURVEILLANCE" (often referred to as "The Brownell Memorandum", particularly the phraseology "...internal security and the national safety..."). (U)
6. Letter from the Director to DAG Byron R. White, 5/4/61, captioned, "TECHNICAL AND MICROPHONE SURVEILLANCES" (discussion of the FBI's use of the Brownell Memorandum in the internal security and criminal fields). (U)
7. Memorandum from C. A. Evans to Mr. Belmont, 7/7/61, captioned, "ORGANIZED CRIME AND RACKETEERING SECTION OF THE DEPARTMENT" (FBI's response to the AG's observations on the use of "electronic devices"). (U)
8. Memorandum from C. A. Evans to Mr. Belmont, 8/17/61, captioned, "MICROPHONE SURVEILLANCES" and the attached document signed by the AG (authorization to use leased telephone lines for microphones in security and major criminal cases). (U)
9. Memoranda from C. A. Evans to Mr. Belmont, 8/2/61 and 3/13/62, captioned, "ALLEGED SOURCE IN THE DEPARTMENT OF JAMES HOFFA, TEAMSTER UNION PRESIDENT" (and a substantially similar caption) (use of a microphone in a criminal/administrative inquiry at the AG's request). (U)

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10. Affidavit of SAC Marlin W. Johnson, 6/23/66 (comments of the AG on 3/19/63 on the legality of the warrantless microphones in general and his desire not to know the details of the installation of a particular microphone). (U)

11. Affidavit of ADIC John F. Malone in June, 1966 (comments of the AG on 11/4/63 concerning the adequacy of microphone equipment). (U)

12. Memorandum from C. A. Evans to Mr. Parsons, 5/24/61, captioned, "WIRETAPPING LEGISLATION" with a copy of a letter, 5/25/61, from Assistant Attorney General (AAG) Herbert J. Miller, Jr., to Senator Sam J. Ervin, Jr. (advising him of the number of microphones then in use in internal security and organized crime intelligence investigations). (U)

(U) 13. Letter from Andrew F. Oehmann to the Director, 5/7/62, captioned, "Communist Party, USA; Internal Security Act of 1950" (AG's approval of the resumption of wiretapping and microphone surveillances in that case). (S)

14. Memorandum from the Director to Mr. Tolson, et. al., 7/16/64, uncaptioned (Director advising the President of the use of a microphone against the Klan during the investigation of a racially motivated murder). (U)

(C) 15. Memoranda, 5/17/65, from the Director to Mr. Tolson, et. al., uncaptioned, and from C. D. DeLoach to Mr. Mohr, captioned. [REDACTED] b1 (S)

16. MEMORANDUM FOR THE ATTORNEY GENERAL, 3/30/65, from the Director (procedure for AG approval of microphone installation, in effect, rescinds the Brownell Memorandum). (U)

17. Memorandum from A. H. Belmont to Mr. Tolson, 5/11/65, captioned, "TECHNICAL AND MICROPHONE SURVEILLANCES" (a discussion between the Director and the AG of the considerations of microphone surveillances, both security and criminal). (U)

18. Memorandum from the Director to Mr. Tolson, et. al., 7/14/65, uncaptioned (discontinuance but not removal of microphones as ordered by the AG while the AG testified before Senator Long's Committee). (U)

19. Letter from the AG to the Director, 9/27/65, captioned, "Special Investigative Techniques" (statement of policy on wire-taps and microphones, including possible future use in criminal investigations). (U)

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20. Memorandum from J. H. Gale to Mr. Belmont, 10/29/65, captioned, "UNITED STATES SENATE COMMITTEE..." (summary of authority and policy in electronic surveillances). (U)
- (U) 21. Memorandum to SAC from SA [redacted] 7/19/51, captioned, "DR. JAMES EDWARD JACKSON, JR., was; FUGITIVE - I.O. 2437, IS-C, ISA of 1950" (survey of fugitive's apartment). (C)
- (U) 22. Memorandum to SAC from SA [redacted] 7/19/51, captioned, "ROBERT GEORGE THOMPSON, was. - Fug. I.O. 2432, IS-C" (survey of fugitive's apartment). (C)
- (U) 23. Letter from SAC, Albany, to the Director, 1/4/52, captioned, "COMMUNIST PARTY USA (CPUSA), COMMUNIST FUGITIVES (COMFUG), IS-C" (film submitted for development, possibly related to [redacted] below). b6 b7C (C)
- (U) 24. Letter from SAC, Albany, to the Director, 1/5/62, captioned, "CPUSA, COMFUG, IS-C (anonymous source, related to [redacted] below). (C)
- (U) 25. Letter from SAC, New York, to the Director, 1/15/52, captioned, "CPUSA, COMFUG, IS-C" (anonymous source, related to [redacted] below). (C)
- (U) 26. Report of FBI Laboratory, 1/29/52, captioned, "CPUSA, COMFUG, IS-C" (handwriting comparison re [redacted] below, requested by SAC, New York, on 1/15/52, above). (C)
- (U) 27. Informal memorandum (to SAC) from SA [redacted] 1/28/52 (search of luggage and hotel room re [redacted] below). (C)
- (U) 28. Informal memorandum (to SAC) from SA(A) [redacted] 3/11/52, captioned, [redacted] was. IS-C" (leads from highly confidential and reliable source). (C)
- (U) 29. Memorandum from SA [redacted] to SAC, 7/22/53, captioned, [redacted] WAS, Harboring - Conspiracy, IS-C" (materials from highly confidential and reliable source). (C)
- (U) 30. Memorandum from SA [redacted] to SAC, 11/27/53, captioned, "FRED MORRIS FINE, was., FUGITIVE - I.O. 2439, IS-C" (material from highly confidential source having access to an apartment). (C)
- (U) 31. Memorandum from SA [redacted] to SAC, 12/7/53, captioned, [redacted] was., SM-C, HARBORING; CONSPIRACY" (privilege of accessible premises). (C)

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- (U) 32. Letter from Director to SAC, Newark, 8/30/54, captioned, "[redacted] was, IS-C, Smith Act of 1940" (consideration of anonymous source is directed to, among other things, locate fugitive). (S)
- (U) 33. Letter from SAC, Newark, to Director, 9/20/54, captioned under [redacted] caption, as above (material from anonymous sources, contemplated new sources). (S)
- (U) 34. New York radiogram to the Director, 11/15/54, captioned, "JUNE. [redacted] WA., IS-C" (citing information from bag jobs indicating contact by [redacted] with CPUSA Underground by telephone, and requesting authority for survey of feasibility to wiretap telephone of landlord, used by [redacted]). (S)
- (U) 35. Headquarters teletype to New York, 11/16/54, captioned, "[redacted] (authority for survey, Note on Yellow clarifies bag jobs). (S)
- (U) 36. Headquarters airtel to New York, 12/2/54, captioned, "[redacted] (follow-up on survey authorization, proposed wiretap would assist continuing bag jobs). (S)
- (U) 37. New York letter to the Director, 12/3/54, under [redacted] caption (form FD-142, justification for wiretap). (S)
38. Memorandum L. V. Boardman to the Director, 12/9/54, under [redacted] caption (approval by Director). (U)
39. MEMORANDUM FOR THE ATTORNEY GENERAL, 12/10/54, under [redacted] caption with initials of AG, 12/13/54. (U)
- (U) 40. New York airtel to the Director, 12/23/54, under [redacted] caption (wiretap installed 12/23/54). (S)
- (U) 41. New York airtel to the Director, 12/27/54, under [redacted] caption (corrected symbol number). (S)
- (U) 42. New York airtel to the Director, 3/7/55, under [redacted] caption (wiretap discontinued). (S)
43. MEMORANDUM FOR THE ATTORNEY GENERAL, 9/7/61, captioned, "[redacted] bearing the AG's signature on the same date (authorization for warrantless wiretaps in connection with fugitive investigation). (U)

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44. Memorandum from [] to Mr. Evans, 10/16/61, under dual caption, "ROBERT FRANKLIN WILLIAMS, aka - FUG., I.O. 3506, W.F. 290, UFAP - KIDNAPPING and WILLIE MAE MALLORY, aka - FUG., I.O. 3511, UFAP - KIDNAPPING" (reporting apprehension of Mallory as a result of wiretap and discontinuance of that wiretap).

(U)

45. New York airtel to the Director, 10/30/61, under the [] caption (recommends discontinuance, informal note 10/31/61 by Special Investigative Division (SID) agrees).

(U)

46. Charlotte airtel to the Director, 10/31/61, under the [] caption (recommends discontinuance of last wiretap, SID note 11/1/61 agrees).

(U)

(U) 47. Documents furnished in discovery from the case captioned [] (45 documents in package #15, anonymous source and similar problems analyzed with Department only for tainting of evidence).

~~(U)~~

(U) 48. Memorandum from AAG James M. McInerney to the Director, 8/16/51, captioned, "[] was., IS-R" (inquiry by Department for existence of inadmissible evidence because of use of warrantless techniques, document #4 in package #12 delivered 6/15/78; documents 1 through 9 illustrate full disclosure to Department).

~~(U)~~

(U) 49. New York airtels to the Director, 8/9/57, captioned, "[] wa, ESP-R" and 8/13/57, captioned, "UNSUB, was., [] ET AL, ESP-R" ("informal look" by FBI at the direction of AAG Tompkins in the ABEL case; documents 11 and 12 in package #12, above).

~~(U)~~

50. Director letter to AG, 11/28/66, uncaptioned (objecting to unwillingness by Department as perceived by Mr. Hoover to share responsibility, unwillingness attributed to personnel turnover in Department; document 17, package #12, above).

(U)

(U) 51. MEMORANDUM FOR THE ATTORNEY GENERAL, 2/27/68, captioned "LEIBEL BERGMAN, aka Henry Cohen, IS-CH" (for AG approval 3/7/68 and comment re potential prosecution, document 30, package #12, above).

~~(U)~~

52. Memorandum from William D. Ruckelshaus to Clarence M. Kelley, 7/20/73, captioned, "Substantive Issues Regarding the Future of the FBI" (suggests issues to be examined by the new Director, including "investigative techniques...from clearly legal to clearly illegal...;" furnished in package delivered 5/16/78).

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Director _____
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☐ SAC, New Rochelle (MRA) ☐ ASAC, Rapid City ("Mini")

3/23/79
(Date)

RE: Legat, Tokyo cable 3/22/77
"U.S. vs. L. PATRICK GRAY III, ET AL."
DISCOVERY PROCEEDINGS

DECLASSIFICATION AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
DATE 03-02-2009

Retention For appropriate
☐ For information ☐ optional ☒ action ☐ Surep, by _____
☐ The enclosed is for your information. If used in a future report, ☐ conceal all sources, ☐ paraphrase contents.
☐ Enclosed are corrected pages from report of SA _____ dated _____

Remarks:

Enclosed document for "full study"

by [redacted]
as suggested in your cable. 62-118045-
We assume court deadline of 3/30/79
will have passed when you receive this.
No new deadline being set by FBIHQ but
handle with dispatch.

Enc. You may contact SA's Paul V. Daly or
Bufile Joseph L. Tierney by telephone to discuss
Urfile unclassified aspects if you desire.
Note p. 3 missing from FBIHQ copy.

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1 - Mr. J. L. Tierney

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Mr. Philip B. Heymann
Assistant Attorney General
Criminal Division

May 3, 1979

Director, FBI

DECLASSIFIED BY 65179 dmh/baw/sbs
ON 03-02-2009

UNAUTHORIZED DISCLOSURE OF
CLASSIFIED INFORMATION
(UNITED STATES V. L. PATRICK
GRAY, III, ET AL.)

Reference is made to your memorandum dated January 12, 1979, requesting the FBI conduct a damage assessment of the unauthorized disclosure to a Federal grand jury and defense attorneys in connection with this matter and requesting this Bureau obtain a similar damage assessment from Central Intelligence Agency (CIA) and National Security Agency (NSA). You requested the conclusions of all then be provided to Mr. Michael E. Shaheen, Jr., Counsel, Office of Professional Responsibility.

By memoranda (two) dated February 27, 1979, to you and other recipients of this memorandum, I advised copies of damage assessments prepared by NSA and the FBI were being furnished to Mr. D. Jerry Rubino, Security Officer, Department of Justice, for appropriate circulation within the Department. In the interests of security and to avoid unnecessary further proliferation of the sensitive information, only one copy of each damage assessment was forwarded to the Department.

By copy of this memorandum directed to Mr. Rubino, I am furnishing a damage assessment provided by CIA by memorandum dated April 18, 1979. Enclosed with the CIA memorandum is a copy of a letter directed to Mr. Barnet D. Skolnik, Special Counsel, Department of Justice, from the General Counsel, CIA, dated December 6, 1978, and a copy of an undated damage assessment prepared by that agency relating

62-117792

Upon removal of classified enclosures, NOT RECORDED
this memorandum becomes unclassified 167 JUN 7 1979

① 62-118045

(US v. Gray, et al.)

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DR:lfj
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Derivative Classification by 010249
Review for Declassification on April 16, 1999
Derived from D9c.4

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ORIGINAL FILED IN 62-117792-119

~~SECRET~~

Mr. Philip B. Heymann
Assistant Attorney General
Criminal Division

to specific portions of grand jury testimony in this matter. I am forwarding this material to Mr. Rubino to be consistent with the manner in which the previous two damage assessments were handled and so he may furnish to appropriate Department officials the material for their review in accordance with Title 28, Code of Federal Regulations, Part 17.

- 1 - Assistant Attorney General
Office of Legal Counsel
- 1 - Assistant Attorney General
Civil Rights Division
- 1 - Mr. Leon Ulman, Chairman
Department Review Committee
- 1 - Mr. Michael E. Shaheen, Jr., Counsel
Office of Professional Responsibility
- 1 - Mr. D. Jerry Rubino (Enclosures - 3) BY COURIER
Security Officer
Department of Justice

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
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FEDERAL BUREAU OF INVESTIGATION
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No Duplication Fees are charged for Deleted Page Information Sheet(s).

Total Deleted Page(s) ~ 133

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Pursuant to Sealed Court Order

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